

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

### Crl. Bail Application No. S- 544 of 2020

For hearing of bail application.

Mr. Dareshani Ali Haider 'Ada' Advocate for the Applicant.  
Mr. Aftab Ahmed Shar, Additional P.G for the State.

**Date of Hearing: 16-10-2020**  
**Date of short Order: 16-10-2020**

### ORDER

**Aftab Ahmed Gorar J.** On dismissal of his Bail Application by learned Special Judge, Anti-Corruption (Provincial), Sukkur Division @ Sukkur vide order dated 19.09.2020, applicant Muhammad Arif Arain has approached this Court by filing instant Crl. Bail Application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 01 of 2020, registered at P.S, ACE, Khairpur for offences under Sections 161 & 34 PPC r/w Section 5(2) Act-II of 1947.

2. The story of the prosecution is that complainant Muhammad Boota lodged above FIR on 11.09.2020, alleging therein that he approached the applicant Muhammad Arif Arain posted as Tapedar of Deh Jamro, Taluka Gambat for change of *Foti Khata* in respect of agricultural land, for which present applicant demanded Rs. 1,50,000/- as bribe. The complainant paid an amount of Rs.50,000/- in presence of witness Muhammad Rafique Arain and amount of Rs.25,000/- was subsequently paid in presence of said witness. The latter amount was given to Mukhtiarkar, while amount of Rs.20,000/- was agreed to be

paid on 11.09.2020; the Circle Officer, ACE, Khairpur arranged trap on 11.09.2020 in presence of learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Khairpur and tainted amount of Rs.20,000/- was recovered from front side pocket of shirt of present applicant.

3. Learned counsel for the applicant argued that the applicant is innocent and has nothing to do with the alleged offence, but due to admitted enmity, he has been booked in this case; that one Abid Hussain, brother of present applicant had filed complaint against complainant party regarding commission of offence of murder of one Nazeeran Bibi, grandmother of the applicant, as such this case has been managed as counter-blast; that the trap was conducted in the hotel which is public place, but no independent person has been associated as witness; that the time of incident, time of registration of FIR as well as time of memo of tainted money is same, which shows that this is a pre-planned and managed case; that there are divergent statements of complainant, as on the one hand, he alleged to have approached the applicant for change of record of his maternal uncle, while on the other hand, he in his further statement stated to have approached the applicant in order to change record of right of his maternal grandmother; that description of property alleged to be changed has not been disclosed in the FIR; that the conversion between the parties is not a matter of record; that Section 161 PPC is bailable while other section does not fall within prohibitory clause of Section 497 Cr.P.C, that final report has been submitted as the investigation is over, hence applicant is no more required for further investigation, therefore, case of the applicant requires further enquiry, as envisaged under Sub-

Section (2) of Section 497 Cr.P.C. Lastly, he prayed for release of applicant on bail. In support of his contentions, learned counsel has placed reliance on the cases of **Muhammad Suleman v. the State (2013 PCr.L.J 1051)** and **Dr. Iftikhar Ahmed Seehar v. The State (2014 YLR 1385)**.

4. Learned Additional P.G for the State opposed the grant of bail on the ground that applicant was apprehended in presence of Judicial Magistrate; that there is sufficient material on record to connect the applicant with the commission of alleged offence.

5. After hearing arguments and perusal of record, it reveals that it is an admitted position that the trapping party / Judicial Magistrate did not hear the conversation between the applicant and the complainant at the time when the alleged illegal gratification was being paid by the complainant to the applicant on 11.09.2020. Furthermore, the time of incident, time of registration of FIR as well as time of memo of handing over trap money is same, therefore, it is yet to be determined by learned trial Court after recording evidence as to whether the tainted amount of Rs.20,000/- paid by the complainant to the applicant and recovered from the possession of applicant by the trapping party was the part payment of illegal gratification allegedly settled between the complainant and the applicant or not. Moreover, the applicant is behind bars since his arrest and the investigation is over as the final report has been submitted, as such the applicant is no more required for further investigation. Even otherwise, the offence with which the applicant is charged does not fall within the prohibitory clause of

Section 497 Cr.P.C. I am fortified by the case-law, relied upon by learned counsel for the applicant, wherein on identical and similar circumstances, post arrest bail has been granted to the accused therein.

6. For what has been discussed above, I am of the considered view that *prima facie* the case against the applicant calls for further enquiry, as contemplated under Sub-Section (2) of Section 497 Cr.P.C. Accordingly, by a short order dated 16.10.2020, instant Crl. Bail Application was allowed and the applicant was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (One Lac) with P.R bond in the like amount to the satisfaction of learned trial Court. These are the reasons in support of short order.

7. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

**J U D G E**

Ahmad