

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT**  
**HYDERABAD**

Cr. Bail Application No.S-63 of 2021

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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30.08.2021

Mr. Abdul Rahim Ansari, Advocate for applicant alongwith applicant.

Mr. Shahid Ahmed Shaikh, Additional P.G alongwith Amanullah Rajpar, I.O of the case.

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**NAIMATULLAH PHULPOTO, J.-** Applicant / accused seeks pre-arrest bail in all three cases viz. Crime Nos.02, 03 and 04 of 2016 registered at P.S ACE Shaheed Benazirabad for offence under Section 409 PPC read with Section 5(2) Prevention of Corruption Act-II of 1947. Previously, applicant / accused applied for pre-arrest bail before learned Special Judge, Anti-Corruption (Provincial) Sukkur Division Camp at Shaheed Benazirabad. All the three pre-arrest bail applications in Special Case Nos.52, 61 and 62 of 2016 were dismissed vide separate orders dated 14.01.2021. Thereafter, applicant/accused has applied before this Court for the same relief separately in all the aforesaid three cases. By this single order, I intend to decide aforesaid bail before arrest applications.

2. Learned Advocate for the applicant/accused has mainly contended that the District Food Controller, Shaheed Benazirabad reported the matter to the competent authority on 23.02.2011, regarding misappropriation / advance payment of the Government wheat but F.I.Rs were lodged on 10.03.2016. It is submitted that there was inordinate delay in conducting the inquiry against the applicant in these cases. It is further

submitted that neither misappropriated amount nor wheat bags were recovered from the possession of the applicant during investigation. It is submitted that the alleged offences do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. Lastly, it is submitted that complainant and investigation officer in all the cases is same, therefore, case for grant of pre-arrest bail to accused is made out.

3. Learned Additional Prosecutor General, Sindh has argued that applicant/accused Khair Muhammad was posted as Food Supervisor, Incharge Wheat Procurement Center, Gupchani during the years 2009 and 2010, he misappropriated wheat bags and caused loss of about Rs.27,80,300/- to the public exchequer in all the three cases. It is further submitted that no doubt the offences do not fall within the prohibitory clause of Section 497 Cr.P.C but mala fide on the part of the complainant / investigation officer is missing in this case which is essential element for grant of pre-arrest bail. It is also argued that applicant/accused was absconder for about 04 years and he has lost some of his normal rights guaranteed by the procedural as well as substantive law. Lastly prayed that the pre-arrest bail applications may be dismissed.

4. I have carefully heard learned Counsel for the parties and perused the relevant record.

5. Prima facie, it appears that in F.I.R / Crime No.02 of 2016, 374 wheat bags were short and applicant caused loss of Rs.8,68,900/-. In Crime No.03 of 2016, 546 wheat bags were short, as such, loss of Rs.9,70,900/- was caused. In Crime No.04 of 2016, 342 wheat bags were short, resultantly applicant apparently caused loss of Rs.9,40,500/- to the Government exchequer. PWs Wazir Ali and Muhammad Rafique Qazi have

implicated the applicant / accused in their statements recorded under Section 161 Cr.P.C. Contention of learned Advocate for the applicant that inquiry against the applicant took sufficient time, is no ground to grant pre-arrest bail in such like cases. Even otherwise, no mala fide on the part of the Government officials / I.O has been specifically attributed by the applicant. It is matter of the record that final reports / challans in all these cases were submitted against the applicant/accused on 26.10.2016 but applicant/accused was absconder for about 04 years, no sufficient explanation has been furnished by him. Learned Advocate for the applicant has also contended that the alleged offences do not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is observed that cases have been registered against applicant/accused for offences under Section 409 PPC read with Section 5(2) Prevention of Corruption Act-II of 1947, which offences are non-bailable. Prima facie, sufficient material has been collected against applicant to connect him with the commission of the offences. Contention of the Defence Counsel that offences allegedly committed by applicant do not attract prohibitory clause contained in sub-section (1) of Section 497 Cr.P.C. Learned Special Judge rightly observed that said consideration is hardly relevant to a case wherein what is sought is pre-arrest bail which is an extraordinary concession. Honourable Supreme Court has repeatedly declared that the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by mala fide on the part of the complainant party or the local Police / Anti-Corruption Establishment. Grant of pre-arrest bail is extraordinary remedy in criminal jurisdiction. It is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore applicant seeking

judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide. It may be observed that it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation as held in the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129). Relevant portion is reproduced as under:-

*“2. Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”*

6. Applicant / accused was granted interim pre-arrest bail but according to Additional P.G, applicant did not join the investigation. Investigation Officer is present before the Court and informed that during investigation allegations leveled against applicant have been found to have been fully established. He has further mentioned that recovery could not be made from applicant as he was absconder for long time. The offences falling under Prevention of Corruption Act-II of 1947 are non-bailable, law does not allow bail to accused as of right.

7. Prima facie, there appear reasonable grounds for believing that applicant/accused has committed the alleged offences. No mala fide on the part of the complainant / I.O is brought on the record.

8. For the above stated reasons, no case for grant of pre-arrest bail to the applicant is made out. Resultantly, the bail applications are dismissed and interim pre-arrest bail already granted to the applicant vide order dated 22.01.2021 is hereby recalled in all the bail applications.

9. Needless to mention that observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

**JUDGE**

Shahid