

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Applications No. 1705 & 1860 of 2021

Applicant in Cr. Bail : Fareed Ahmed Khan s/o Abdul Haleem Khan
Appl. No. 1705 of 2021 through M/s. Mehmood Alam Rizvi and Jazib
Aftab, advocates.

Applicant in Cr. Bail : Muhammad Ali Khan s/o Shoukat Ali,
Appl. No. 1860 of 2021 through M/s. Shoukat Hayat and Abdul
Hafeez Sandhu, advocates.

Respondent : The State, through M/s. Chaudhry Waseem
Akhtar & Muhammad Ahmed, Assistant
Attorneys General.

Date of hearing : 09.02.2022, 11.02.2022 & 24.02.2022
Date of order : 28.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both criminal bail applications as the same, being arisen out of FIR No. 12/2021 registered at P.S. FIA, Anti-Corruption Circle (ACC), Karachi under section 5(2) of the Prevention of Corruption Act, 1947, have been heard by me together.

2. Applicant/accused Fareed Ahmed Khan s/o Abdul Haleem Khan, through Criminal Bail Application No. 1705 of 2021 seeks pre-arrest in the aforesaid crime. He was admitted to interim pre-arrest bail by this Court vide order, dated 07.09.2021, and now the same is fixed for the confirmation of interim bail or otherwise, while applicant/accused Muhammad Ali Khan s/o Shoukat Ali, by means of Criminal Bail Application No. 1860 of 2021, seeks post-arrest bail in aforesaid crime. Their earlier applications for grant of same concession in Case No. 11 of 2021 were dismissed by the learned Special Judge (Central-I) Karachi vide orders dated 30.08.2021 and 13.09.2021, respectively.

3. Brief facts of the prosecution case as alleged in the F.I.R., registered on 10.06.2021 at 1930 hrs., are that Enquiry No 12/2021 of FIA Commercial

Banking Circle (CBC), Karachi was registered on the basis of a letter, dated 27.01.2021, issued by Mr. Fahad Khawaja, Acting Deputy Director FIA CBC, Karachi addressed to Director FIA Sindh Zone-1, Karachi seeking permission to conduct preliminary enquiry on the following allegation:

“It is learnt through source that in Case FIR No.11/2020 registered at this Circle, there is suspicion of bribery and unlawful practices by the concerned I.O (SI Muhammad Ali), the then Station House Officer (Insp. Fareed Ahmed Khan), HC Zeeshan Khanzada and other staff. It is learnt that they have extorted bribe to the tune of Rs.4 million through different pressurizing techniques and blackmailed the accused persons of FIR No.11/2020 by freezing their bank accounts. In order to probe the facts, it is suggested that a preliminary criminal enquiry may be initiated against the above officials and staff.”

Later, on 03.02.2021, one Javed Ahmed Magoon s/o Aijaz Ahmed Magoon (*accused in FIR No. 11/2020 of FIA CBC, Karachi*) filed a complaint to the Director FIA, Karachi against the officers of FIA CBC, Karachi for demanding illegal gratification and accepting settled amount of Rs.40,00,000/-, alleging therein that he and his brother Mubashir Ahmed Magoon were taken to office of the FIA CBC, Karachi where they were harassed, abused and threatened. Inspector Fareed Ahmed Khan (*applicant in Cr. Bail Application No. 1705 of 2021*) demanded Rs. 60,00,000/- which was settled at Rs.40,00,000/- and then six (06) cheques from a seized cheque book were given by the FIA officers to Mubashir Ahmed Magoon for encashment of Rs. 40,00,000/-. FIA officers also de-frozeed the respective bank account through a letter issued to the bank. The said amount was withdrawn from the bank and given to Inspector Fareed Ahmed Khan in presence of S.I. Muhammad Ali (*applicant in Cr. Bail Application No. 1860 of 2021*) and other officers. Hence, it has established that Inspector Fareed Ahmed Khan, S.I. Muhammad Ali Khan and FC Iskandar Zeeshan Khanzada in capacity of public servants have committed offences of criminal misconduct

by demanding and accepting bribe from Javed Ahmed Magoon (*through his brother's bank account*) by harassing and blackmailing him for indicting his family members and showing favour by releasing his brother Mubashir Ahmed Magoon, which is punishable u/s 161/109, P.P.C. r/w 5(2) PCA-II 1947; hence, the FIR.

4. Learned counsel for the applicant Fareed Ahmed Khan has contended that the learned trial Court has mentioned in the impugned order that after obtaining pre-arrest bail, the applicant did not attend the trial Court, while it is matter of record that the applicant was suffering from Covid-19 and such medical certificate was placed on record; however, the same was not considered and the trial Court dismissed the pre-arrest bail application of the applicant for non-prosecution despite presence of the counsel for the applicant before the Court and hearing of his arguments on merit; that till date no proceeding has been made in the FIR No.11/2020, which was lodged against the complainant, while the instant FIR is a counter blast of said FIR lodged with mala fide intention, to cause unjustified harassment to the present applicant and to give undue favour to the complainant, who is accused in FIR No.11/2020, by concocting a false story; as such, the entire case against the present applicant is doubtful; that no case is made out against the applicant as the complainant Javed Ahmed Magoon, his witnesses Mubashir Ahmed Magoon and Rais Ahmed have stated in their statements recorded under section 161, Cr.P.C. that I.O./S.I. Muhammad Ali of FIA CBC, Karachi handed over six cheques of account No. 0155-0100514806 of Meezan Bank Ltd, titled as "Magoon Brothers" bearing Nos. 30242619, 30242624 to 30242628) from the seized account of Mubashir Ahmed Magoon on 24.07.2020 for encashment but as per seizure memo, dated 22.07.2020, the said seized cheque book is containing cheques No. 30242629 to 30242665; hence, the matter requires

further inquiry; that the applicant is ready to join investigation and face the trial; however, at the movement there is a serious apprehension of his arrest, maltreatment, torture, humiliation with mala fide intention and ulterior motives by the hands of the F.I.A.; hence he seeks protection from this Court by way of grant of pre-arrest bail to him.

5. Learned counsel for the applicant Muhammad Ali Khan, while adopting the arguments of learned counsel for the applicant Fareed Ahmed Khan, has contended that the applicant is innocent and has falsely been implicated in this case by the FIA authorities; that the statement of PW Muhammad Aamir Shaikh, the Operation Manager of Meezan Bank, Urdu Bazar Branch, Karachi was recorded on 15.07.2021 and as per the record provided by the said P.W., it reveals the transaction time of 27.07.2020 at 1559 hours for withdrawal of Rs.2,500,000/-, vide cheque No.30242628 and transaction time of 28.07.2020 at 1332 hours, for withdrawal of Rs.3,200,000/-, vide Cheque No.30242627 from said freezed account are not supportive to prosecution case, which facts alone is sufficient to destroy the whole case of the prosecution and belie the 161, Cr.P.C statements of Mubashir Ahmed Magoon and others; that some undeniable documents are also available to prove the innocence of the applicant and his false implication in the present case i.e. Roznamcha entry of CBC, departure of applicant, remand application etc.; that as per principles laid down by the Superior Courts, the deeper appreciation of record is not allowed at bail stage, but only the tentative assessment is required to make in order to decide the bail; however, learned trial Court while declining the interim pre-arrest bail of the applicant referred to debit entry of Rs.33,00,000/- in the joint account of the applicant and his wife as major reason for declining of bail, but at the time of post arrest bail, the bank statement produced by the counsel for applicant justified such amount of Rs.33,00,000/- and the learned trial Court

accepted such justification, but dismissed the bail on account of other entries; that the entire evidence of prosecution is based on documentary evidence, which is in possession of FIA, therefore, there is no chance of tempering of the same by the applicant; that the case of the applicant falls within the ambit of further inquiry entitling him to the concession of bail.

6. Conversely, learned Assistant Attorneys General have opposed these applications on the grounds that during course of enquiry, it has revealed that applicant S.I. Muhammad Ali Khan issued letter No. FIA/CBC/FIR-11/2020/7750-78, dated 22.07.2020, to the Head of Compliance Division of all Banks to mark lien as blocked on debit transaction of 28 accounts including A/c No. 0155-0100514806, titled as "Magoon Brothers", maintained at Meezan Bank Ltd. and he also issued a letter No. FIA/ CBC/FIR-11/2020/8055-56, dated 24.07.2020, to said Head of the Bank for the removal of lien on aforesaid bank account for personal gain with mala fide intention; that after de-freezing of said bank account, two major amounts were debited from the account on 27.07.2020 and 28.07.2020 for Rs.2,500,000/- vide cheque No.30242628 and Rs.3,200,000/- vide Cheque No.30242627; that Rais Magoon and Mubashir Magoon have also disclosed that they had withdrawn the said amounts and handed over Rs.2,000,000/- on 27.07.2020 and Rs.2,000,000/- on 28.07.2020 to applicant Inspector Fareed Ahmed Khan in the office of FIA in presence of applicant S.I. Muhammad Ali Khan and FC Iskandar Zeeshan Khanzada; that Farrukh Ikram Khanzada has also corroborated the version of Rais Magoon and Mubashir Magoon as he was accompanied by them to Meezan Bank Ltd. M.A. Jinnah Road Branch on 27.07.2020 for withdrawal of cash amount.

7. Heard learned counsel for the parties and perused the material available on record.

8. It appears that Inspector Abdul Munim Gillani of F.I.A. CBC pursuant to Enquiry No. 80/2020 regarding illegal business of *Hawala/ Hundi* raided the office of "Shan International" on 22.07.2020 and seized 28 cheque books, laptop mobile phones, TTs, rubber stamps & other documents etc., under a seizure memo prepared in presence of accused Javed Ahmed Magoon & others and registered an FIR bearing No.11 of 2020 under the Foreign Exchange Regulation (Amendment) Act, 2020 against them. The investigation of said crime was assigned to applicant SI Muhammad Ali who, on 22.07.2020, directed to the concerned banks through e-mail and letters to mark lien as block on debit transactions or any other account of the four accused persons and to submit the required documents on 24.07.2020. Subsequently, Javed Ahmed Magoon, the arrested accused of FIR No.11/2020, stated in investigation that his brother Mubashir Ahmed Magoon was doing his own garments accessories business and he had nothing to do with his business. Later, on 24.07.2020, the statement of said Mubashir Ahmed Magoon was recorded wherein he also stated that he has no concern with the business of his brother Javed Ahmed Magoon, and he was/ is doing his business of garments accessories in the name and style of "Magoon Brothers" and maintaining account bearing No.0155-0100514806 in Meezan Bank and inadvertently his cheque book containing cheques No. 30242629 to 30242665 was seized. As per banking documents, the said account was being operated by Mubashir Ahmed Magoon himself while all the other 27 accounts mentioned in seizure memo were being maintained by his brother accused Javed Ahmed Magoon in his name. On the request of Mubashir Ahmed Magoon that L/C and payments to his clients were held up due to seizure of his account, applicant Muhammad Ali Khan, vide letter dated 24.07.2020 de-frozeed his said account of Meezan Bank Ltd.

9. So far the allegations against the present applicants are concerned, it is an admitted position that alleged cheques No.30242628 and 30242627 of Rs.3,200,000/- and Rs.2,500,000/- were not part of alleged seized cheque book of the account of Mubashir Ahmed Magoon at the time of its seizure under memo of seizure, dated 22.07.2020; hence, it is yet to be seen in the trial if the alleged six cheques including said two cheques were handed over to Mubashir Ahmed Magoon by the applicant(s) for encashment as claimed by him. It is also an admitted position that as per Interim Charge Sheet, P.Ws Rais Ahmed Magoon, Mubashir Ahmed Magoon, Farrukh Ikram Khanzada have deposed in their 164, Cr.P.C. statements regarding making payment of illegal gratification to applicants; however, they are close relatives *inter se* with blood relations, while lien on the account of Mubashir Ahmed Magoon was removed on his verbal request and the applicant Muhammad Ali had properly intimated to his superior officer by letter No. FIA/CBC/FIR-11/2020/8055-56, dated 24.07.2020. There are many aspects remain to be completed for which the investigating officer issued letters to banks and concerned departments.

10. As a result of above discussion, interim pre-arrest bail granted to applicant Fareed Ahmed Khan s/o Abdul Haleem Khan by this Court in Cr. Bail Application No. 1705 of 2021, vide order dated 07.09.2021, is confirmed on the same terms and conditions, while applicant Muhammad Ali Khan s/o Shoukat Ali in Criminal Bail Application No. 1860 of 2021 is admitted to post-arrest bail in the aforesaid Crime/F.I.R. subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) and P.R. Bond for like amount to the satisfaction of the Nazir of this Court.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the

case of the applicants on merits. In case applicants who have been admitted to post and pre-arrest bail try to misuse the concession of bail in any manner, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.

12. Above are the reasons of my short order dated 28.04.2022.

JUDGE

Athar Zai