

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S- 33 of 2021

Cr. Bail Appln. No. S- 39 of 2021

Cr. Bail Appln. No. S- 71 of 2021

Date

Order with Signature of Hon'ble Judge

For hearing of bail application

15.02.2021

Mr. Rashid Khan Durrani Advocate for the Applicant in Criminal Bail Application No.S-33 of 2021

Mr. Hamayoun Shaikh and Ashok Kumar K.Jambha Advocates for the Applicant in Criminal Bail Application No.S- 39 of 2021

Mr. Imtiaz Ali Abbasi Advocate for Applicant in Criminal Bail Application No.S- 71 of 2021

Mr. Shafi Muhammad Mahar, DPG for the State

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ORDER

Aftab Ahmed Gorar, J;- By way of this common order, these three bail applications filed by the applicants Meeran Shah S/o Qurban Ali Shah, Haresh Kumar S/o Ram Chand, Hindu, and Kouro S/o Arbelo, are beign disposed of arising out of Crime No.05 of 2020 of Police Station, ACE Ghotki for offences punishable under Sections 409, 34 PPC r/w Section 5(2) Act-II of 1947.

2. Briefly, the facts of the prosecution case are that on 24.12.2020 at 1600 hours, Inspector Kaleemullah Mahessar of ACE Police Sukkur lodged the FIR at Police Station ACE Ghotki in respect of the incident which had taken place on 15.12.2020 at 1600 hours stating therein that this case is being registered as per permission of competent authority viz. Chairman ACC-II Sukkur dated 24.12.2020, and as per directions of Deputy Director ACE Sukkur vide No.DD/ACE/R/5646-48 dated 24.12.2020 and in the result of case Crime No.72/2020 of PS 'B' Section Ghotki on behalf of the State. The allegations are that the accused Haresh Kumar S/o Ramchand (Hindu)

Private person is involved in the illegal purchase of Government Medicines in connivance with the Store Keeper, DHO Office Ghotki at Mirpur Mathelo namely Meeran Shah (BPS-16), Kouro S/o Arbelo Shaikh Sweeper of DHO Office Ghotki (BPS-02) Mirpur Mathelo and others P.S 'B' Section Ghotki while patrolling on 15.12.2020 at about 1800 hours, stopped the Cultus Car No.BFR-691, on spy information searched the car in presence of mashirs namely PC Ghulam Ali and PC Akber Ali of Police Station 'B' Section Ghotki wherein three cartoons of Government stamp medicines viz. two cartoons of Moo-Furk Co. Injection with 280 pocket per cartoon and five injection in each per pocket sealed and in third cartoon of disposal syringes on which 1000 syringes are sealed. Thereafter such mashirnama was prepared by police for securing of medicines on spot. Thereafter, such case Crime No.72/2020 was registered at Police Station 'B' Section Ghotki on the complaint of HC Abdul Qadir of Police Station 'B' Section, Ghotki, hence the above accused have committed criminal breach of trust and abused their official authority and caused wrongful loss to the Government exchequer, as such have committed offence punishable under the above section of law, hence the case was registered on behalf of State.

3. The applicants/accused on having been refused post-arrest bail by the Court of learned Special Judge, Anti-Corruption (Provincial) Sukkur Division Sukkur vide order dated 04.01.2021, have approached this Court for same relief by filing the present bail applications.

4. Mr. Rashid Khan Durrani, learned counsel for the applicant/accused Meeran Shah in Criminal Bail Application No.S- 33/2021, contended that the applicant/accused being innocent has been involved in this case falsely by the police; that there is no independent witness of the alleged recovery, despite earlier information by the the complainant; that prior to this the FIR Crime No.72/2020 was lodged at Police Station 'B' Section Ghotki, thereafter, the learned Magistrate referred the matter to Special Judge, Anti-Corruption Sukkur vide order dated 19.12.2020, which was allegedly

impugned by the SHO Police Station 'B' Section Ghotki by filing Criminal Revision No.37/2020, which was dismissed vide order dated 19.12.2020; that the applicant/accused has been involved at the influence of local politician of the area; that no such open inquiry was conducted in the matter prior to lodgment of the FIR, which shows the malafides on the part of Anti-Corruption Police; that the applicant/accused being government servant would not abscond or tamper with the prosecution evidence; that the case has been challaned and the applicant/accused is in custody and no useful purpose would be served if the applicant/accused is kept under incarceration for an indefinite period; that the case against the applicant/accused is one of further inquiry, therefore, he is entitled to grant of bail. He in support of his contentions relied upon the cases of ***Muhammad Siddique and another v. Province of Punjab and other (2020 P Cr. L J 197)*** and ***Gulshan Solangi and others v. The State through P.G Sindh (2020 SCMR 249)***.

5. M/s Ashok Kumar K.Jambha and Hamayoun Shaikh, learned counsels for the applicant/accused Haresh Kumar in Criminal Bail Application No.S-39 of 2021 contended that the applicant/accused being innocent has been involved in this case falsely by the police; that there is no independent witness of the alleged recovery, despite earlier information by the complainant; that the applicant/accused has no concerned with the medicines, whereas, he is running a General Store in Sukkur City; that infact the Police of 'B' Section Ghotki malafidely involved the applicant in FIR No.72/2020 and according to media reports the applicant was produced before Deputy Commissioner, Ghotki whereas, as per Newspaper clipping two accused persons were shown arrested, whereas, the police has shown that they arrested the applicant along with two other accused; that the applicant/accused is a private persons, hence Section 409 PPC does not apply; that no such inquiry has been conducted in the matter, whereas, the recording 161 Cr.P.C statements of the witnesses is clear violation of the

Ant-Corruption Rules; that the offence with which the applicant has been charged does not fall within the prohibitory clause of Section 497 Cr.P C; that the case has been challaned and the applicant/accused is in custody and no useful purpose would be served if the applicant/accused is kept under incarceration for an indefinite period; that the case against the applicant/accused is one of further inquiry, therefore, he is entitled to grant of bail. He in support of his contentions relied upon the cases of ***Nisar Ahmed v. The State and another (2014 SCMR 27)***; ***Wazir Muhammad v. The State (2015 Y L R 2461)***; ***Haji Muhammad Yasin v. The State and another (2018 Y L R 908)*** and ***Muhammad Bux v. The State (2019 Y L R Note 38 [Sindh])***.

6. Mr. Imtiaz Ali Abbasi, learned counsel for the applicant/accused Kouro in Criminal Bail Application No.S-71 of 2021 contended that the applicant/accused being innocent has been involved in this case falsely by the police; that there is no independent witness of the alleged recovery, despite earlier information by the complainant; that the applicant/accused being a Sweeper in Health Department has no concern with the medicines; that infact the Police of 'B' Section Ghotki malafidely involved the applicant in FIR No.72/2020; that no such inquiry has been conducted in the matter; that the case has been challaned and the applicant/accused is in custody and no useful purpose would be served if the applicant/accused is kept under incarceration for an indefinite period; that the case against the applicant/accused is one of further inquiry, therefore, he is entitled to grant of bail. He in support of his contentions relied upon the case of ***Sameen Asghar v. The State (2018 Y L R Note 70)***;

7. Mr. Shafi Muhammad Mahar, DPG for the State opposed for grant of bail to the applicants/accused by contending that they were arrested by the police along with the government medicines which have been stolen from the Government Store, as such they have actively participated in the commission of the offence; that so far as the applicability of Section 409

PPC, the applicability thereof against the private persons for the offence u/s 409 PPC, he referred to Section 2(b) of Sindh Act No.IV of 1992 the Sindh Enquiries and Anti-Corruption Act, 1991. In support of his contentions, he has relied upon the case of ***Gulshan Ali Solangi and others v. The State through P. G Sindh and others (2020 SCMR 249)***.

8. I have heard the learned counsel for the applicants/accused, learned Deputy Prosecutor General for the State and perused the record. On perusal of record, it is evident that the matter was reported to the Chairman ACC-II, Sukkur and on the approval of Committee, the above FIR was registered, wherein all the three applicants/accused have been attributed specific role that they were involved in the illegal sale and purchase of the government stamped medicines by committing fraud and forgery. Furthermore, the recovery of government medicines in huge quantity has also been effected from the possession of the applicants/accused at the time of their arrest by the police, which prima-facie connect them with the commission of alleged offence. Moreover, the allegations against the applicants/accused are of serious in nature, as they are involved in the illegal sale and purchase of government stamped medicines in huge quantity, thereby caused collusive loss to the government exchequer, so also the poor and needy patients were deprived of the legitimate right of provision of government medicines at Government Hospitals. If such practice is not curtailed with iron hands, the same will be repeated again and again. The offence with which the applicants are charged falls within the prohibitory clause of Section 497 Cr.P.C disentitling the applicants/accused to the concession of bail. It is well settled principle of law that deeper appreciation of evidence of material available on record could not be done while deciding bail application.

9. In view of the above, I am of the considered view that the applicants/accused have failed to make-out a case of further inquiry, as sufficient material is available against the present applicants/accused

connecting them with the commission of alleged offence. Accordingly, instant bail applications stand ***dismissed***.

10. There is no cavil to the proposition laid down in the case law relied upon by learned counsels for the applicants/accused but the facts and circumstances of the case in hand are entirely distinguishable to the facts and circumstances of the cited case law. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

Judge

ARBROHI