

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1782 of 2021

Cr. Bail Application No. 1841 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

22nd December, 2021

Mr. Muhammad Daud Narejo, Advocate for applicant in CrI. B.A. No.1782 of 2021.

Mr. Aroon Parsad, Advocate for applicant in CrI. B.A. No.1841 of 2021.

Barrister Moiz Ahmed, Advocate for complainant.

Mr. Ali Haider Saleem, A.P.G.

=====

Omar Sial, J.: Anas and Muhammad Naveed have sought pre-arrest bail in crime No. 378 of 2021, registered under sections 406 and 408 P.P.C. at the Clifton police station. Earlier, their application seeking bail was dismissed by the learned 2nd Additional Sessions Judge, Karachi South on 8-9-2021.

2. A background to this case is that the aforementioned F.I.R. was registered on 6-8-2021 on a written complaint made by Nusrat Ali Khan (who is the Chief Commercial Officer of E-Access (Private) Ltd). The company has been in business for 23 years. Khan recorded that his company provides point of sale machines to merchants in order to enable the customers of that merchant to make payments through credit cards. In essence the point of sale terminals act as a bridge between the bank which issued a credit card and the merchant where the credit card is used. The company has also provided similar machines, to a travel agency by the name of Sehra Travels and Tours. In the month of May 2021, United Bank Limited informed the company that an amount of Rs. 9 million was owed to it by the company for payments made by UBL to Sehra Travel and Tours for transactions carried out on credit at the travel agency. The company was surprised to receive such a bill and after making inquiries it was revealed that applicant Anas along with one Minhal, who were both employees of the company, along with applicant Muhammad Naveed, who was the owner of Sehra Travel and Tours had committed a fraud. Anas and Minhal, who were software programmers, had made the necessary tweaks to the program of the company installed on the point of sale machines provided to Sehra Travels and Tours. The

tweaks enabled the user of the point of sale machine to receive a higher amount from the bank compared to the sale that had taken place at the point of sale terminal. The F.I.R. was registered against Anas, Minhal and Muhammad Naveed.

3. The learned counsel for Anas has argued that Anas is innocent and has been falsely implicated in this case; that the FIR in the case has been lodged after three months; there is no CCTV footage of the incident; there are no eyewitnesses to the incident and that in any case, Anas had resigned from his employment in the company in March 2021 i.e. well before the F.I.R. was registered; that the fraud which has been committed, if at all, has been committed by Sehra Travel and Tours, hence, by Muhammad Naveed.

4. To the contrary, the learned counsel for Muhammad Naveed has argued that the travel agency itself is a victim of the fraud; that it had returned the over billed money to the company; that it was Anas and Minhal who have committed the fraud; that Muhammad Naveed is only the owner of Sehra Travel and Tours and in his day to day business he was not even aware that Sehra Travel and Tours had received money over and above what was due to it on account of services that they had rendered to its customers; that in any case the over billed amount has been returned to the company.

5. Learned counsel appearing on behalf of the complainant was given permission to assist the learned Additional Prosecutor General. He argued that Anas was an employee of the company and was responsible for software programming on the point of sale devices. He admitted that Anas has left his job in March 2021, however, argued that the transactions from which the complaint has arisen had taken place as far back as January 2021 and that it was only after reconciliation of accounts between various entities and complaints received from United Bank Limited that the fraudulent transactions were unearthed. He therefore justified the delay in the lodging of the FIR on this ground as well. Learned Additional Prosecutor General argued that a crime of a different nature had been committed and that the prosecution was in possession of evidence which would conclusively establish the nexus of the two applicants with the offence complaint. Adopting the arguments of the complainant's counsel he prayed that no leniency may be shown as the impact of such crimes was detrimental to the economic health of the country and adversely impacted the confidence of investors.

6. I have heard the learned counsel for the applicants as well as the learned counsel for the complainant and the learned Additional Prosecutor General. My observations and findings are as follows:

7. The prosecution is in possession of official bank statements that clearly reveal payments made into the account of Sehra Travel and Tours intermittently and then a portion of that money for each transaction finding its way into the account of Anas. Learned counsels, for both applicants, were unable to satisfactorily justify such payments being made into their respective accounts. While no reason was given by the learned counsel for Anas in this regard, learned counsel for Muhammad Naveed attempted to justify by stating that the payments credited into the account of Sehra Travels and Tours were payments made against legitimate transactions conducted at the travel agency. He further justified the paper trail by stating that Sehra Travel and Tours did indeed transfer money to Anas, however, as Anas was an employee of the company, they were under the mistaken belief that the said money was actually being sent to the company and not to Anas in his personal capacity. With much respect, I do not find the argument raised by the learned counsel to be satisfactory. When asked to show evidence which could at least tentatively establish the payments received by Sehra Travel and Tours were for legitimate transactions, the learned counsel expressed his inability to do so at this time but argued that this was an issue of further inquiry. I find it absurd that the owner of the travel agency could be so naïve as to think that payments made to Anas were actually payments being made to the company. Similarly, the learned counsel for Anas could not provide any justification as to on what account were payments being credited into Anas' personal account. Learned counsel for the complainant argued that subsequent to the discovery of the fraud, the applicants had agreed to return the amount but that the cheques which they gave had also bounced. He submitted that even if the applicants stance that the money was received and distributed by them through a mistake was to be believed, they should have returned the money to the company. Both applicants, however, did not express their desire or willingness to return the money. The counsel for applicant Naveed did however argue that he had returned the money but was unable to provide any evidence of doing so.

8. In view of the above and upon a tentative assessment, the prosecution appears to be in possession of electronic records which clearly demonstrate

money being paid into the account of the travel agency and then a portion of it being transferred to Anas as well as some others whose bail applications are not before me. Prima facie, both Applicants have failed to justify these amounts debited and credited into their accounts and thus appear to be the beneficiaries of the over billed amounts. The arguments raised by the applicants counsels at this stage to justify their innocence do not appear satisfactory. Neither of the applicants have argued that there was any *mala fide* which motivated either the complainant or the police to involve them in this crime. However, it will be the learned trial court who would finally adjudicate upon this issue after it has had the benefit of analyzing evidence produced before it. At the preliminary stage, I am of the view that the prosecution is in possession of reasonable evidence to establish a nexus of the applicants with the offence complained of. No malafide exists or has been argued. The applicants, even on a tentative assessment of the material on record, have failed to provide a reasonable explanation to the trail of money that has landed in their respective accounts.

The bail applications stand dismissed.

JUDGE