

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 2009 of 2021
Cr. Bail Application No. 2087 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	

23rd November, 2021

Mr. M.A. Lakhani and Mr. Mujtaba Raja, Advocates for applicant in CrI.B.A. No.2009/2021.

Mr. Aamir Raza Naqvi, Advocate for applicant in Cr.B.A. No.2087/2021.

Mr. Muhammad Ahmed, Assistant Attorney General a/w Ghulam Murtaza, I.O. FIA.

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Omar Sial, J: Shah Nawaz Rehman (applicant in CrI. Bail App. No. 2009 of 2021) and Aamir Memon (applicant in CrI. Bail App. No. 2087 of 2021) have sought post arrest bail in crime number 39 of 2021 registered under sections 420, 109 and 34 P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947 at the F.I.A. police station. Earlier, their applications seeking bail were dismissed on 18.10.2021 by the learned Special Judge (Central-II) at Karachi.

2. Inspector Shabbir Ahmed Chandio, on behalf of the State, lodged the aforementioned F.I.R. on 27-9-2021 reporting an offence which had occurred between the years 2014 to 2017. The contents of the F.I.R. are lengthy and therefore for the sake of brevity are not being reproduced here as the F.I.R. itself forms a part of the record. Broadly, the case is that P.I.A. wanted to improve its in-flight entertainment and therefore decided to procure i-pads for this purpose. Aamir Memon was the Brand Manager at P.I.A. and he initiated a note stating therein that 350 i-pads (though the documents reflect 60) be acquired whereas Shah Nawaz Memon made a presentation before the Board of Directors of P.I.A. during the 359th Board of Directors Meeting on the necessity of procuring the i-pads. The allegation against Aamir Memon is that he wrongly quoted in his note that the Board of Directors had approved the purchase of 350 i-pads whereas permission for 47 had been given by the Board. In addition to the allegation of making a presentation in the Board on the subject, Shah Nawaz Memon is also accused of supporting the acquisition even though he was aware that a Rs. 5

billion project had already been initiated to improve Business Class services. An allegation of violation of the relevant procurement rules has also been made.

3. I have heard learned counsels for the applicants as well as learned A.A.G. My observations and findings are as follows:

4. It appears from the record and what has been explained to me that on 24.6.2014 the Advisor to the Chairman of P.I.A. held a meeting in which it was decided that in order to improve the Business Class of P.I.A., Apple i-pads be installed in flights on certain sectors. Consequent to the meeting a note was initiated by Aamir Memon, who was then the Brand Manager in which it was suggested that 60 i-pads be acquired for a two month pilot project which would run from August 1, 2014 to September 30, 2014. This note was approved by the then Advisor to the Chairman as well as the then Managing Director (who was not Shah Nawaz Memon). This note in which Aamir Memon has sought the management's approval is alleged to have been initiated with malafide intent with a view to defraud P.I.A. as Aamir Memon (who was then a Brand Manager) signed the same as Brand Manager as well as General Manager Brand Management. In my view Aamir Memon was too low down the management hierarchy to be in a decision making position and admittedly had no role in either deciding if the i-pads should be bought or in approving the project. His role was confined to initiating the note (ostensibly in accordance with the stipulated procedure) in line with what had been decided in the meeting presided over by the Advisor to the P.I.A. Chairman. It has been confirmed by the investigating officer of the case that to date no evidence has been found which would even prima facie make Aamir Memon the beneficiary of any ill-gotten wealth. Simply initiating a note with a justification as to why Apple i-pads, compared to Samsung tablets be acquired, is prima facie not an offence.

5. The record reflects that the P.I.A. Board of Directors held its 359th meeting on September 23, 2014. Shah Nawaz Rehman was not a member of the Board but attended the meeting as a Special Invitee. Item No. 9 of the meeting dealt with the i-pads to be procured. The minutes reflect that presentation on the need to acquire the i-pads was made by the Officiating Director, Marketing (and not Shah Nawaz Rehman as alleged by F.I.A.). The 108th minute of this meeting reflects that the Officiating Director Marketing proposed that 47 i-pads be

procured for a two months project. The decision of the Board of Directors was as follows:

Board desired that management should initiate as a pilot project of using i-pad tablets as in-flight entertainment. Board desired that the hardware should be acquired on rental basis which could be changed periodically to keep the technology and contents up to date.

6. It appears that while the proposal was made for procuring 47 i-pads, the Board of Directors did not specify a number of i-pads to be purchased however gave its approval to the procurement on rental basis (rather than outright buying).

7. Aamir Memon initiated a note (referred to as "M-1" in P.I.A.'s parlance) in which he has primarily justified as to why Apple i-pads should be purchased. After his note was approved to be put before the management for approval, the same was put as an agenda item before the Board of Directors in its 359th meeting. In accordance with the stipulated procedure at P.I.A. for such procurements, the matter was then placed before the Central Purchasing Committee. The Committee, which constituted of 13 members (and did not include either of the two applicants) then in its meeting number 584 of 2016 held on 30-11-2016 approved the purchase of 350 i-pads and award of tender. Both applicants had no role to play in this process. The investigating officer of the case has further confirmed that no evidence of any kick back, commission, common intention or ill-gotten wealth reaching the two applicants in any manner has been discovered by him till to date. Both applicants were not responsible for compliance with the procurement laws.

8. In a nutshell, Aamir Memon is in jail because he initiated a note justifying the purchase of i-pads over Samsung tablets and Shah Nawaz Memon is incarcerated for allegedly making a presentation, which the record shows he did not, to the Board of Directors. Both acts prima facie do not establish the commission of an offence. Most reluctantly I observe that in this particular case, the investigating officer has provided little or no assistance in the matter. He was unfortunately not trained enough to deal with corporate crime and appears to not possess basic knowledge of corporate law. He was unable to answer as to what necessitated the arrest of the applicants in light of the evidence that he had, however, to this question too, he preferred to stay silent. The learned A.A.G.

was obviously also not able to assist us in view of the fact that he too relied on the investigating officer to render assistance. The Honorable Supreme Court and this Court in a number of cases now has reiterated that arrests should be effected only when there is at least prima facie evidence of the commission of a crime by the person being investigated. Unfortunately, it appears that the law enforcers, for reasons known to them best, in most cases appear restless to effect an arrest the moment an F.I.R. is lodged without even a preliminary evaluation of the case. In the investigation of corporate crime it is also necessary that the investigating officer at least has a basic knowledge of corporate structures and their workings. It is not prudent that an officer not at all versed in white-collar crime and the workings of a large company second-guesses the business decisions of experienced individuals on the Boards of companies. Management decisions may go wrong and at times may have been made negligently, yet that does not mean ipso facto that a crime has been committed by them or that the intent was bad. The investigating officer could not provide any cogent reason as to why, if the Central Purchasing Committee comprising of 13 people approved the contract, was a pick and choose policy employed in making certain members as accused while giving a clean chit to the others. Same was the position with the decisions taken by the Board of Directors.

9. The entire evidence in the case is documentary, which is in possession of the F.I.A. There is no chance that the evidence will be tampered with by the applicants. If the F.I.A. is of the view that both, or either of the applicants, is a flight risk, it is well empowered to take the necessary precautions if it so deems appropriate. The applicants have co-operated in the investigation. If either, or both, were a part of a conspiracy to defraud P.I.A. the same can only be proved after evidence is produced at trial, however, at this stage, keeping in view the material shown to me by the prosecution, their case appears to be one of further inquiry.

10. In view of the above, both Aamir Memon and Shah Nawaz Rehman are admitted to bail subject to their furnishing solvent sureties in the sum of Rs.200,000 each and P.R. Bonds in the like amount to the satisfaction of the learned trial court.

JUDGE

