

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

*Present: Ahmed Ali M. Shaikh, CJ
Omar Sial, J*

**Crl. Bail Application No. 319 of 2018
Crl. Bail Application No. 338 of 2018**

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application:

Mr. Khaleeq Ahmed, Advocate for applicant in Crl. B.A. No.319/2018.
Mr. Aamir Mansoob Qureshi, Advocate for applicant in Crl. B.A. No.338/2018.
Mr. Ghulam Shabbir Baloch, A.A.G. a/w I.O. Ahmed Jan Khan.

Dated of hearing : **23.10.2018**

Dated of hearing : **20.11.2018**

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Omar Sial, J.: The applicants Muhammad Amir Khan and Tahir Ahmed have sought post arrest bail in crime number 3 of 2018 registered under sections 409, 419, 420, 468, 471, 109 and 34 P.P.C. at the F.I.A., Commercial Banking Circle in Karachi. Earlier, their post arrest bail applications were dismissed by the learned Special Court (Offences in Banks) Sindh, Karachi on 24.2.2018.

2. Dubai Islamic Bank (Pakistan) Limited, through two of its officers, namely Abdul Baseer Pasha and Syed Asim Raza Rizvi, made a written complaint to the F.I.A., which was turned into an inquiry and subsequently the aforementioned F.I.R was lodged. It was stated that a Bank's customer, Laila Ali Khan had reported to the Bank that two forged cheques, each in the amount of Rs. 2,000,000, had been encashed from a joint account she operated with Sher Ali Khan. According to Ms. Khan, the original cheques were in her possession. Upon preliminary inquiry it was discovered that the two cheques in question pertaining to the Khan's account had been deposited in the account of another of the Bank's customer named Misbah Bibi. The signatures on the cheques were verified by Amir Mustafa and the transactions were authorized by Syed Muhammad Ansar Rizvi. Both the cheques were found to be fake by the Bank.

3. The inquiry conducted by F.I.A. revealed that the account in the name of Misbah Bibi was opened on 13-9-2017 on the instructions of Tahir Ahmed Ikhlas who told her that the account was needed for the deposit of proceeds for welfare work. Tahir Ahmed was also found involved in obtaining a duplicate of Laila Ali Khan's N.I.C and through misrepresentation and fraud also transferred the ownership of Ms. Khan's phone SIM in the name of one Nayyar Sultana Bukhari. Tahir Ahmed was also found involved in the forgery of the two cheques in the amount of RS. 2,000,000 each issued from the account

of Ms. Khan. CCTV footage also revealed that Tahir Ahmed had deposited the two cheques in the Bank's University Road Branch and the next day had come with Misbah Bibi to collect the cash.

4. As regards the applicant Muhammad Amir Khan, the allegation against him is that he worked as an Account Opening Officer in the Operations Department of the Bank and that he had passed on information relating to customers to his accomplices (presumably Tahir Ahmed) for the purposes of effecting the fraud.

5. We have heard the learned counsel for the applicants as well as the learned A.A.G. and have also perused the record with their able assistance. Our observations are as follows.

6. The only ground urged by the learned counsel for Muhammad Amir Khan is that he is innocent as he was not even posted at the Branch where the fraud is said to have been committed. Similarly, the learned counsel for the Tahir Ahmed had also argued that his client is innocent; that he is neither the account holder in which the cheques were deposited nor is he a beneficiary to the proceeds; that the applicant has recorded an extra judicial confession before the police but that such a confession has no weight in the eyes of law; that the applicant appearing in the CCTV footage cannot establish his guilt; that there is no mens rea present and that the offence with which the applicant is charged does not fall within the non-prohibitory clause of section 497 Cr.P.C.

7. The record appears to reveal that the learned counsel for Muhammad Amir Khan is correct in his assertion that Amir did not work at the Branch where the fraud is said to have occurred. Indeed, the prosecution has not even alleged that he worked in the same Branch. He is said to have used the ID (muhammad.amir) while sitting at some other location, illegally and unlawfully used the customer data at his disposal to play a role in the fraud. At the moment, the evidence against Amir appears to be a statement made by a friend of his named Rizwan Qadir who has recorded in his section 161 Cr.P.C. statement that Amir in his presence provided the requisite data to Tahir Ahmed and that Tahir gave Amir Rs. 1,000,000 as his share in the fraud. The Head of the Centralised Account Opening Department of the Bank, Naureen Pervaiz, in her section 161 Cr.P.C. statement has recorded that Amir was an Account Opening Officer in her department and that his job was to scrutinize the account opening forms and the connected documents with it. The statement of this witness however shows that on 1.8.2017, Amir scrutinized the account of one Sarfraz Iqbal. Sarfraz Iqbal, though not one of the affected persons in this case, is said to be an affected person in another case in which

Tahir Ahmed is accused. There is another piece of evidence which may or may not be against Amir. It is the statement of Misbah Bibi under section 164 Cr.P.C. In her statement she has referred to a "Tahir and an Amir" at places and "Tahir alias Amir" at others. She narrates how she was fooled, primarily by Tahir, into opening a bank account in her name on the pretext that as she was poor, a welfare organization would help her by depositing money into her account. F.I.A. investigation has revealed that Tahir Ahmed goes by the alias Taha as well as Mohammad Amir.

8. We are of the view that scrutinizing the accounts being opened in the Bank was a job description of Amir. Apart from a vague and sketchy statement of Rizwan Qadir there does not appear to be cogent material with the investigating agency at the moment to establish that Amir did indeed pass on customer information to the others who are accused of the fraud. As regards, the statement of Misbah Bibi implicating Amir along with Tahir, it will have to be determined at trial when she is examined whether the Amir she referred to was Muhammad Amir the applicant. In our opinion, the case of Muhammad Amir requires further inquiry. Accordingly, we admit him to bail against a solvent surety of Rs. 1,000,000 and a P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

9. The case of Tahir Ahmed is on a different footing. There is evidence against him in the shape of CCTV footage and the statements of Misbah Bibi. Misbah has given specific details about Tahir's involvement and the fact that he also got engaged to her. The section 164 Cr.P.C statement is on record therefore we are not quoting out of it for the sake of brevity. Misbah's account also finds support from the investigation conducted by the F.I.A. which has observed that a similar modus operandi i.e. enticing poor people and innocent girls he had opened several accounts in their names which accounts were then used to perpetuate frauds. The F.I.A. found him to be "very cunning and clever" and involved in other similar cases in which he is an accused. According to the criminal record of Tahir collected by the F.I.A. Tahir is involved in nine other similar cases (F.I.R. No. 10/2010, F.I.R. No. 58/2011, F.I.R. No. 45/2012, F.I.R. No. 17/2013, F.I.R. No. 1/2014, F.I.R. No. 15/2016, F.I.R. No. 3/2018, F.I.R. No. 9/2018 and F.I.R. No.12/2018). No previous ill will or enmity has been alleged by the learned counsel for Tahir Ahmed on the part of F.I.A. for the registration of these cases spanning a period of eight years. There is evidence against Tahir that he was also present at the Mobilink outlet along with Nayyar Sultana Bukhari, the lady in whose name the SIM of Laila Ali Khan, was transferred.

10. We are of the view that there is sufficient evidence against Tahir Ahmed to prima facie connect him with the crime on a tentative assessment. With nine pending cases of fraud against him, prima facie the applicant being a habitual offender cannot also be conclusively ruled out at this stage.

11. To conclude:

(a) Criminal Bail Application No. 319 of 2018 is allowed and Muhammad Amir Khan is admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs. 1,000,000 and P.R. bond in the like amount to the satisfaction of the learned trial court.

(b) Criminal Bail Application No. 338 of 2018 filed by Tahir Ahmed is dismissed.

JUDGE

CHIEF JUSTICE