

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

Before :
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Cr. Bail Appl No.44 of 2023

Asad Ali Dawach

Vs.

The State

1. For order on office objection at A
2. For hearing of bail application

06.02.2023

Mr. Shoukat Hayat, advocate for applicant
Syed Dildar Hussian Shah, Special Prosecutor, NAB a/w IO Adnan
Hafeez

ORDER

Muhammad Iqbal Kalhoro, J:- Applicant, standing a trial in Reference No.04/2022, pending before the learned Accountability Court No.4, Sindh at Karachi, containing allegations of misappropriation of amount of Rs.3.2 billion through fake pension vouchers and fake agriculture refund vouchers using office of the District Accounts' Office Hyderabad by the accused including applicant, has filed this application for post-arrest bail. Applicant was arrested on 07.04.2022 and the reference in question was filed on 16.05.2022 identifying at least five bank accounts maintained by the applicant in which a total amount of Rs.154.8 million drawn against fake pension vouchers was credited and withdrawn.

2. Learned counsel for the applicant has argued that applicant is innocent, has been falsely implicated in this case; that applicant has nothing to do with the bank accounts identified in his name in the investigation; that applicant when appeared before the trial court in custody had moved an application u/s 94 Cr.PC seeking forensic expert's opinion of signature over the bank account opening forms, which though allowed, has not yet been done by the Investigating Officer; that this is case of two versions, one version forwarded by the applicant and the other version postulated by the prosecution and therefore the case against the applicant is one of further enquiry; that applicant had appeared in the court after freezing order dated 01.02.2022 in respect of his bank accounts and had made a statement in black and white supported by affidavit denying bank accounts to have ever been operated by him, but

learned trial court while deciding the bail application has not considered said facts. In support of her arguments, learned counsel has relied upon the case laws reported in **2006 SCMR 366, PLD 1998 SC 1, PLD 2022 SC 475, PLD 2021 Islamabad 266, 2020 SCMR 431, 2010 SCMR 1178, 2021 SCMR 1909, 2013 PCr. LJ 924, 2016 SCMR 18, 2008 SCMR 1316, 1996 SCMR 1132, 2010 PCr. LJ 1112, 2019 PCr. LJ 412 and 2020 SCMR 434.**

3. On the other hand, learned Special Prosecutor, NAB and IO have opposed bail to the applicant. IO has submitted that applicant had failed to join investigation and put forth his stance of having nothing to do with the bank accounts, which he is raising now; that application u/s 94 Cr.PC seeking forensic expert opinion of signature of bank accounts was filed only after closure of investigation and filing of reference; that applicant is a habitual offender and previously in a similar case, he was arrested and his 164 Cr.PC statement was recorded before the Judicial Magistrate No.10, Karachi (South) in which he has given a detail of his role and the *modes operandi* employed by the other co-accused in the scam.

4. We have considered submissions of the parties and perused material available on record including the case laws cited at bar. At the very outset, we may reiterate the settled proposition of law that in bail matters only tentative assessment of material available on record is to be undertaken, any appreciation which goes deep into merits of the case is to be avoided for fear of causing prejudice to either party at the time of trial. In investigation, which applicant despite being put on notice through a call-up notice failed to join, his five bank accounts in different banks reflecting credit and debit of a huge amount to the tune of Rs.154.8 million were identified, regarding which he has failed to put forth any explanation except a simple denial that he has nothing to do with the said bank accounts. Such plea of the applicant essentially constitutes his defence, the fall-out of which involving deeper appreciation could neither be gauged nor such an attempt while deciding a bail application is permitted. In the investigation, relevant papers including bank statement and CNIC of the applicant and statement u/s 161 Cr.PC of the witness involving applicant as one of the accused in the case have been collected and made part of the prosecution case. In presence of such *prima facie* documentary evidence against the applicant buttressed by his own admission of involvement in an identical case before the Magistrate u/s 164 Cr.PC, we are of the view that he is not entitled to the concession of bail. Consequently, this bail application is dismissed.

5. However, the trial court is directed to expedite the trial and examine the material witnesses vis-a-vis role of the applicant within a period of 04 months. After which, in any case, applicant would be at liberty to move a fresh bail application before the trial court for consideration to be taken by the trial court independent of this order.

6. The bail application is disposed of in the above terms; the findings made hereinabove are tentative in nature and would not prejudice case of either party at trial.

Judge

Judge

Rafiq P.A.