

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 921 of 2023

Applicant : Muhammad Aqib and Huzaifa both sons of
Muhammad Yaqoob, through Mr. Muhammad
Baqar, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General.

Complainant : Muhammad Hafeez Memon s/o Muhammad
Hashim Memon, through Mr. Asadullah Burdi,
advocate

Date of hearing : 06.06.2023

Date of order : 06.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Having been rejected their earlier bail application bearing No. 1673 of 2023 by the learned Sessions Judge, Malir Karachi, vide order dated 20.04.2023, applicants/accused Muhammad Aqib and Huzaifa both sons of Muhammad Yaqoob through instant bail application seek post-arrest bail in Crime No. 1701 of 2022, registered under sections 468, 471, 406, 420, 34, P.P.C. at P.S. S.I.T.E. Superhighway Industrial Area, Karachi.

2. As per F.I.R. lodged on 17.12.2022, complainant Muhammad Hafeez Memon owns a Rice Mill in the name and style of "Baba Enterprises" situated at Plot No. B-21 Site Super Highway Phase-I, Scheme 33 Karachi and having his office at Shahrah-e-Faisal, Karachi where applicants had been maintaining his accounts and looking after other affairs of his business since long. On checking of F.B.R. statement and accounts, he (*complainant*) came to know that the applicants and their companions were misappropriating the account as amounts received online were not shown in the entries existed in the transaction. On enquiry it revealed that the applicants have committed misappropriation of funds amounting to Rs. 3 to 4 Crore by way of cheating and fraud, for that they were booked in aforesaid F.I.R.

3. Learned counsel for the applicants has contended that the applicants are innocent and have falsely been implicated in this case by the complainant; that no specific role has been attributed to the applicants for the commission of alleged offence and the allegations against them are general in nature; that there is an inordinate delay of more than one and half year in lodging the F.I.R.; that no convincing evidence is available with the prosecution to establish the alleged charge against the applicants; that the applicants were taken from their house on 28-12-2022 and illegally detained by the police, whereafter on 04.01.2023 Habeas Corpus Petition bearing No. 01/2023 was filed by their father in the Sessions Court Malir, thereafter, on 05.01.2023, on the directions of the said Court, the Judicial Magistrate conducted a raid at P.S. SSIA, where applicants were found available being nominated in the instant case and their arrest was shown on 02.01.2023 from Jamali Pull Chowk, Super Highway, Karachi; that during such incident the complainant forcibly got a Flat bearing No. 403, 4 Floor, situated in Sohni Heights, Jamshed Quarters, Karachi transferred from the applicants; that the co-accused Muhammad Shadman Khan has already been granted post-arrest bail by this Court vide order dated 19.04.2023 passed in Cr. Bail Application No. 691/2023 and the case of the applicants is also of similar nature; hence, they are entitled to the concession of bail.

4. On the hand, learned counsel for the complainant and Additional Prosecutor Genera have opposed this application on the ground that the applicants have committed fraud with their employer causing him loss of 3 to 4 crore by misappropriating the funds; that specific role has been attributed to applicants for the commission of alleged offence; that sufficient documentary evidence to connect the applicants with the commission of the alleged offence is available with the prosecution; hence, they are not entitled for the concession of bail.

5. Heard, record perused.

6. It is an admitted fact that there is an inordinate delay of 18 months in lodgment of the F.I.R., which has not been explained plausibly by the complainant.

It is alleged in the F.I.R. that *the amount received from the parties online was not received in bank*. Learned Counsel for the complainant and Addl. P.G. could not reply the query convincingly as to how it is possible that the payments made online do not reflect in bank account. Moreover, they have failed to refer to from the record any of the alleged payment that was made but are not available in bank statement.

7. It appears that the applicants are confined in judicial custody since 02.01.2023. Police has submitted the challan; as such, they are not required for investigation. Sections 420 & 471, P.P.C. are bailable and offence under sections 406 & 468, P.P.C. do not fall within prohibitory clause of section 497, Cr.P.C. The trial has yet not been concluded and the delay in trial is not on the part of the applicants. The applicants are not likely to temper with the prosecution evidence. No useful purpose would be served if the applicants are kept behind the bars for indefinite period and as a rule bail is not to be withheld as a punishment.

8. Accordingly, instant application is allowed, and in result thereof the applicants are admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by them solvent surety in the sum of Rs.300,000/- (Rupees Three Lacs Only) each and P.R. Bond for like amount to the satisfaction of trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. However, in case the applicant(s) misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

10. Above are the reasons of my short order dated 06.06.2023.

JUDGE

Athar Zai