

*ORDER SHEET***IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.****Cr. Bail Application No. S — 591 of 2023.**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR HEARING OF MAIN CASE.

Date of Hearing: 4 July 2023.

Applicant: Muhammad Panah through Mr. Noor ul Haq Qureshi  
Advocate.Respondent: The State through Mr. Bashir Ahmed Almani  
Assistant Attorney General for Pakistan along with  
Mr. Waqar Ahmed Kalhoro Sub-Inspector  
Investigation Officer FIA Shaheed Benazirabad.

**MOHAMMAD ABDUR RAHMAN, J.**- This is an application under section 497 of the Code of Criminal Procedure, 1898 for Bail After Arrest that has been filed by the Applicant in respect of Crime No. 06 of 2023, registered by PS FIA Crime Circle Shaheed Benazirabad, under Sections 420, 419, 468, 471 and 109 of the Pakistan Penal Code, 1860 read with subsection (2) of section 5 of the Prevention of Corruption Act, 1947.

2. The Applicant / Accused is an employee of the Hyderabad Electricity Supply Company (HESCO) and was serving at HESCO in the capacity of a Deputy Manager Store. On a surprise inspection carried out by the officers of the Federal Investigation Agency on 31 January 2023, which was duly recorded in the Roznamcha of FIA CC Shaheed Benazirabad, it was discovered that there was “tampering” in the record pertaining to stock inventory that was being maintained by the Applicant/Accused inasmuch as “mutations, “cuttings” and “changes” to the original “Bin Card” had been made. It is common ground that these Bin Cards were maintained and in the custody of another Senior Store Keeper, Khalil Ahmed Jeelani who is a co-accused. The “Bin Cards” that were maintained by the Senior Store Keeper, Khalil Ahmed Jeelani were verified

against a physical inventory carried out by the Federal Investigation Agency and which purportedly revealed misappropriation valued at Rs.1,129,200/- (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) of an item known as "AA Conductor ANT". On the basis of the information gathered in the investigation the following persons were implicated in Crime No.60 of 2023 each being assigned the roles as indicated in the table below:

S No.	Name	Position Held	Role Assigned
1	Mr. Muhammad Pannah	Deputy Manager Store	Tampered with the Bin Card and Embezzled an amount of Rs. Rs.1,129,200
2	Khalil Ahmed Jeelani	Senior Store Keeper	Maintained the Bin Card, Tampered with the Bin Card and Embezzled an amount of Rs. Rs.1,129,200
3	Azhar Imam	Senior Store Keeper	Tampered with the Bin Card and Embezzled an amount of Rs. Rs.1,129,200
4	Naveed Younus	Store System Supervisor	Tampered with the Bin Card and Embezzled an amount of Rs. Rs.1,129,200

3. The Applicant had maintained Bail Application No.18 of 2023 before the Special Judge Anti-Corruption (Central) Hyderabad, which was dismissed on 24 May 2023 by that Court on the basis that the facts alleged in the FIR substantiated the allegations made against the Applicant / Accused i.e. that as he was the Deputy Manager Store of HESCO at the relevant time he therefore would be held responsible for the misappropriation of any stock that was in his custody.

4. It is apparent from the order dated 24 May 2023 passed by the Special Judge Anti-Corruption (Central) Hyderabad in Bail Application No. 18 of 2023, that at the time of hearing of that application a sum of Rs.6,600,000/- (Rupees Six Million Six Hundred Thousand) as opposed to the earlier sum of Rs.1,129,200 (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) was shown by the Federal Investigation Agency as having been misappropriated by the Accused. As there was a variation in the amounts at the time of hearing of this Application I Inquired from the Investigation Officer as

to why there was such a variation? The Investigation Officer confirmed that an initial investigation had found that a sum of Rs.1,129,200 (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) had been misappropriated, as the investigation involved stock of the value of Rs. 2,000,000,000 (Rupees Two Billion) and which was still being verified at present the investigation had so far shown a stock of the value of Rs.6,600,000/- (Rupees Six Million Six Hundred Thousand), as having purportedly been misappropriated hence the variation in the amounts.

5. Mr. Noor ulHaq Qureshi, Advocate advanced arguments on behalf of the Applicant / Accused. While reiterating and adopting the contentions of Mr. KhudaBux Leghari, Advocate appearing for the applicant in Criminal Bail Application No.S-538 of 2023 Mr. Qureshi stated that as per the decision of **Tariq Bashir vs. The State**<sup>1</sup> the conditions for grant of bail had been settled by Muneer Khan, J wherein he had stated that:<sup>2</sup>

- “ ... It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is 'a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example-\_-
- (a) where there is likelihood of abscondance of the accused;
  - (b) where there is apprehension of the accused tampering with the prosecution evidence;
  - (c) where there is danger of the offence being repeated if the accused is released on bail; and
  - (d) where the accused is a previous convict.”

Mr. Noor ulHaq Qureshi, Advocate, stated that as each of the sections under which the Accused had been charged carried a period of imprisonment which was under ten years, bail would be granted as a “rule” and no exceptional circumstances existed in this matter for not following the “rule”. Mr. Noor ul Haq

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<sup>1</sup> PLD 1995 SC 34

<sup>2</sup> *ibid* at pg. 40

Qureshi, Advocate further relied on a judgment entitled **Abdul Qudus V. The State**<sup>3</sup> wherein it was stated that in matters which are outside of the prohibitory clause of subsection (1) of section 497 of the Code of Criminal Procedure, 1898, bail was to be granted as a right. He further argued, that the main co-accused Mr. Khalil Ahmed Jeelani had submitted a second bail application bearing No. 25 of 2023 in which he had premised the application on additional facts i.e. that the value of the loss that has been attributed to the accused had been increased from Rs.1,129,200 (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) to Rs. 6,600,000 (Rupees Six Million Six Hundred Thousand) and that the investigation had confirmed that the inventory list that had been maintained by the Accused had been verified by the superior officers of the Accused making this a case requiring a further inquiry to be conducted and which were grounds for the grant of bail to the Accused. Bail Application No. 25 of 2023 was heard before the Court of Special Judge Anti-Corruption (Central) Hyderabad, who had on 26 June 2023 granted bail to the Mr. Khalil Ahmed Jeelani in the following terms:

“ ... Learned counsel for accused has stated that he has a fresh ground for filing of the instant bail application as interim challan has been submitted and a fresh statement is issued by the concerned department in respect of the alleged documents, hence the case of applicant / accused comes within the ambit of further enquiry. He has also made a statement in writing that applicant/accused is ready to furnish the surety **as security** equivalent to the alleged amount of Rs.11,00,000/- for the purpose of grant of bail. Learned AD(L) has conceded and has raised no objection.

In view of above statement of learned defence counsel it appears that now the case of accused is of further enquiry because every alleged document was counter signed by the Superior Officers of the department for which proper investigation is required. In case when situation leads towards further enquiry bail shall be better option than jail. Besides this, AD(L) has given no objection, therefore, applicant/accused Khalil Ahmed is admitted to post arrest bail on furnishing solvent surety in the sum of Rs.100,000/- and PR Bonds in the like. Further, applicant/accused shall deposit Security amount Rs.11,00,000/- (Eleven Lac) in shape of Saving Certificates being a profitable Scheme with the accountant of this court which will be kept till final decision in the case. In case if prosecution will succeeded in proving the charge against the accused the **security amount** with profit will be released in favour of concerned department, however, in case of failure of prosecution the security amount will be released to accused back.”

He maintained that applying the Rule of Consistency, as bail had been secured by Mr. Khalil Ahmed Jeelani and who was the primary accused in the matter the

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<sup>3</sup> 2002 P Cr. L.J 430

concession of bail should be extended to the Applicant as well. He further contended that various factual circumstances raised issues necessitating a further inquiry having to be carried out by the prosecution. He contended that while the interim charge sheet indicated a loss of Rs.1,129,200 (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) of the "AA conductor ANT" when this is compared against the submission of a computer statement of GTN issue / receipt on 22 May 2023 and which was available with the Federal Investigation Agency it showed that each of the items that had purportedly been misappropriated were accounted for. He stated that the entire inventory had also been verified by the superior officers of the Accused and which had not been disclosed previously and which also made this a case where a further inquiry was necessary. He relied upon on **Gulab Khan vs. Chairman Nab**<sup>4</sup> to rely on the proposition that applying the rule of consistency the present Applicant / Accused should also be granted bail. He also relied upon **Saeed Ahmed vs. The State**<sup>5</sup> which states that where the entire case of the State was based on documentary evidence which was in possession of the prosecution there was no question of an accused tampering with any evidence to attract an exception for post arrest bail.

6. Mr. Bashir Ahmed Almani, Assistant Attorney General appearing for the State as well as the Investigation Officer Mr. Waqar Ahmed Kalhoro stated that at the time of the initial inquiry a loss of Rs.1,129,200 (Rupees One Million One Hundred and Twenty Nine Thousand Two Hundred) had been assessed by the Federal Investigation Agency and subsequently after a further investigation goods worth a sum of Rs. 6,600,000 has so far been identified as misappropriated. He states that as the value of the stock is approximately Rs.2,000,000,000 (Rupees Two Billion) the investigation has not been completed as of yet and which is ongoing. He states that, as such, the interim challan has been issued and the final challan has not yet been submitted. He

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<sup>4</sup> 2020 SCMR 285

<sup>5</sup> 1996 SCMR 1132

acknowledged that bail had been granted to Mr. Khalil Ahmed Jeelani on terms as indicated in that order and submitted that this application for bail on behalf of the Applicant should be considered independently.

7. I have heard the counsel for the Applicant, the Counsel for the State as well as have been provided assistance by the Investigation Officer. It is apparent that admittedly the inquiry in respect of the purported misappropriation is ongoing and which has not been concluded and in fact the Investigation Officer has stated that on account of the quantum of the inventory the investigation will take a substantial about of time. It has also come on record that the inventory that was prepared was counter signed by the superior officers of the accused at HESCO clearly indicating that the role of the Accused is mitigated and a further inquiry is necessary in this matter. I have also noted that each of the offences that have been mentioned in the FIR carries a sentence of less than ten years and therefore the applicant is entitled to bail as a rule. I also do not see how any of the exceptions to the grant of bail in such matters, as noted in **Tariq Bashir vs. The State**,<sup>6</sup> can be considered to apply. Finally, applying the rule of consistency, as bail has already been granted to the co-accused Khalil Ahmed Jeelani (who is the primary accused) and noting that the Applicant's role in the purported crime is actually more remote than that of Khalil Ahmed Jeelani, to whose bail the State has actually consented, I had on 4 July 2023 admitted the Applicant on Post Arrest Bail and these are the reasons for that order.

Hyderabad. 7.7.2023.

JUDGE

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<sup>6</sup> PLD 1995 SC 34