

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr.Bail Appln:No.S-776 of 2023

Applicant: Mohammad Zeeshan Siddiqui son of Abdul Majid, through Mr. Mohammad Jamil Ahmed, Advocate.

Respondent: The State through Mr. Ghulam Abbas Sangi Assistant Attorney General for Pakistan.

Date of hearing: **28.08.2023**

Date of Order: **28.08.2023**

O R D E R

ARSHAD HUSSAIN KHAN, J:- Through the instant criminal bail application, the applicant/accused above named seeks his post-arrest bail in Crime No.05 of 2023, under sections 8 & 17(1) of Emigration Ordinance 1979 r/w Sections 3 & 4 of Passport Act 1974 & Section 109 P.P.C, registered at P.S FIA Crime Circle Mirpurkhas after his bail plea was declined by the learned Special Judge (Central) Hyderabad vide order dated 19.07.2023.

2. The facts of the prosecution case in nutshell are that consequent upon enquiry No.05 of 2023 of FIA Mirpukhas which was registered on the basis of strategic analysis Report on outward/inward foreign remittances with respect to the individuals who have been involved in receiving inward foreign remittances from Israel through the small wire transfer transactions carried out through the Western Union of Pakistan Post Office Mirpurkhas. During the course of enquiry it was transpired that Muhammad Zeeshan Siddiqui son of Abdul Majid Siddiqui resident of Mirpurkhas was desirous to proceed Israel for the purpose of employment and he came in contact with an agent named Ishaq Matat Israeli National and his relatives who demanded and received Rs.340,000/-from him for the purpose of illegal emigration in Israel.

Further agent Ishaq Matat arranged tickets and other necessary documents for him and above named accused travelled on fake documents and took illegal entry in the Israel despite knowing that his passport was not valid for Israel as Israel is non-recognized state by the Government of Pakistan and such act of the above named accused is in clear violation of emigration Ordinance 1979 hence this case is registered against him.

3. Per learned counsel for the applicant, the FIR has been lodged with delay of about 07 years without any plausible explanation. He further contended that the alleged offence with which applicant / accused is charged does not come within the prohibitory clause of section 497(ii) Cr.P.C and section so applied in this case carries punishment may extend to 05 years or with fine or with both. He next submitted that all sections applied in the FIR only to make out a false story as the present concocted story does not fall within the proviso of section 3&4 Passport Act, 1974 and FIA also misapplied the proviso of Immigration Ordinance which can be determined at the time of trial hence requires probe. He urged that in view of facts of the present case, the false implication of applicant/accused cannot be ruled out despite of the fact that there is no any strength of crime in shape of independent witness either from the contiguous or from the occurrence associated by the complainant except some documentary evidence which in possession of the prosecution hence, there is no chance to be tempered with the evidence and the same also requires further enquiry at the stage of trial. He lastly urged that there are general allegation leveled against the applicant/accused hence prayed that he is in jail since his arrest and no more required for further investigation therefore, he may be released on bail on point of further inquiry.

4. Learned Assistant Attorney General also conceded the same plea so taken by the learned counsel for the applicant /accused and submits that as the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C therefore, he has no objection if, the applicant / accused is released on bail.

5. Heard argument and perused the record.

6. Admittedly, the FIR has been lodged with a long delay of about 07 years without any plausible explanation. The whole episode of the case only reliant upon allegedly managed documents in order to travel as well illegal entry working of applicant / accused in Israel and sending remittances through Western Union of Pakistan requires deeper appreciation at the stage of trial. The offence with which applicant / accused is charged does not come within the prohibitory clause of section 497(ii) Cr.P.C as punishment of the same is not more than 05 years or with fine or with both; therefore, at this stage the applicant / accused has made out a good case for grant of bail in his favour. In this regard, the learned counsel for applicant / accused has relied upon the case of *Muhammad Tanveer vs The State reported in 2017 PLD S.C. at Page-733*, which for the sake of convenience is reproduced hereunder:-

“b) Criminal Procedure Code (V of 1898)-S. 497 Constitution of Pakistan, Art. 185(3)---Cases not falling within the prohibitory clause of S. 497, Cr.P.C. and practice in subordinate courts of refusing bail in such cases on feeble grounds-Supreme Court observed that such practice should come to an end because the public, particularly accused persons charged for such offences were unnecessarily burdened with extra expenditure and the Supreme Court was heavily taxed because hundreds of leave petitions piled up in the Supreme Court and the diary of the Court was congested with such like petitions; that precious time of the Supreme Court was wasted in disposal of such petitions; that the Supreme Court was purely a constitutional court to deal with intricate questions of law and Constitution and to lay down guiding principles

for the Courts of the country where law points required - interpretation; that prisons were accommodating convicted and under-trial prisoners more than double their capacity and State authorities were involved in transporting such prisoners from the prisons to the court premises on daily basis for court hearings, which involved risks and extra expenditures from the public exchequer; and that grant of bail in offences not falling within the prohibitory limb of S. 497, Cr.P.C. was a rule and refusal an exception, therefore all subordinate courts, special courts and tribunals should follow said principle in its letter and spirit.”

7. Accordingly keeping in view the facts and circumstances of the case, dicta as laid down by the Supreme Court of Pakistan in case of “Muhammad Tanveer (supra) and no objection extended by the learned Assistant Attorney General, the case against applicant / accused requires further inquiry within the parameters of Sub-Section (2) to Section 497 Cr.P.C; therefore, the applicant/accused is admitted to bail subject to his furnishing solvent surety in sum of Rs.200,000/- and PR bond in the like amount to the satisfaction of learned trial Court.
8. Needless to state that the observations hereinabove are tentative, and nothing herein shall be construed to prejudice the case of either side at trial.
9. The instant bail application is disposed of accordingly.

JUDGE