

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S - 614 of 2022

(Aftab Ahmed Bhutto v. The State through F.I.A. Cyber Crime Centre, Sukkur)

Cr. Bail App. No. S - 600 of 2022

(Maqbool Ahmed Bhatti v. The State)

Cr. Bail App. No. S - 619 of 2022

(Dilawar Khan Bhatti v. The State)

Date of hearing : 21.08.2023

Date of decision : 21.08.2023

Mr. Qurban Ali Malano assisted by Mr. Israr Ahmed Shah, Advocates for applicant in Cr. Bail App. S-614 of 2022.

Mr. Nisar Ahmed Bhanbhro, Advocate for applicant in Cr. Bail App. No. S-600 of 2022.

Mr. Shahid Ali K. Memon, Advocate for applicant in Cr. Bail App. S-619 of 2022.

Mr. Muneer Ahmed Siyal, Assistant Director (Legal), F.I.A.

Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General.

ORDER

Muhammad Iqbal Kalhoro, J. - By this common order, the three applications in hand for post-arrest bail filed by applicants Aftab Ahmed Bhutto, Maqbool Ahmed Bhatti and Dilawar Khan Bhatti are disposed of having been filed in Crime No.46 of 2022 of Police Station F.I.A. Crime & A.H.T. Circle, Sukkur, registered for offences under Sections 409, 109, P.P.C. read with Section 5(2) of the PCA-II (Prevention of Corruption Act, 1947).

2. Initially, FIR bearing Crime No.35 of 2022 was registered by police at Police Station Jhangro, District Sukkur under Sections 379, 411, 420, P.P.C. alleging recovery of 190 ration bags containing rice, sugar, soaps and ghee belonging to Utility Stores Corporation ('U.S.C.') from outside of a godown allegedly owned by applicant Dilawar Khan Bhatti on 28.08.2022 in presence of applicant Maqbool Ahmed Bhatti, said to be an employee at Utility Store, Sukkur. He was accordingly arrested and in an ensuing inquiry the ration bags transpired to have been stolen from Utility Store and lying outside of the godown for the purpose of changing their packaging for sale. Afterwards, the FIR was transmitted to F.I.A. Crime & A.H.T. Circle, Sukkur, which incorporated the same in a book under Section 154, Cr.P.C. at its own Police Station as Crime No.46 of 2022 under Sections 409, 109, P.P.C. read with Section 5(2) of the PCA-II (Prevention of Corruption Act, 1947).

3. In the investigation, apart from arrested accused Maqbool Ahmed Bhatti, three other persons namely Agha Naseer Ahmed Durrani, applicant Aftab Ahmed Bhutto and applicant Dilawar Khan Bhatti were identified to have actively participated in the offence. In the challan, role of each accused has been detailed. It appears that co-accused Agha Naseer Ahmed Durrani was Regional Manager, U.S.C., Sukkur Region and under two letters dated 27.08.2022 had directed Store In-charge U.S.C. Mushtaque Ali to handover 500 bags on subsidized rates to one Mehreen Bhutto, ex-MNA, Pakistan People's Party, Khairpur, duly sanctioned by the Federal Government for which she had already made payment; and to handover as many ration bags as demanded by one Muneer Ahmed, General Secretary, Bhutto Welfare Organization, Sukkur.

4. The case of the prosecution is that these ration bags were meant for flood affectees and were to be distributed among them, and under the garb of a sanction by the Federal Government regarding handing over 500 ration bags legally to Miss Mehreen Bhutto, ex-MNA, P.P.P., Khairpur, 500 more ration bags were apparently given by the accused to one Muneer Ahmed, General Secretary, Bhutto Welfare Organization, Sukkur, but in fact those were misappropriated and dumped in a warehouse for selling after morphing their packaging, and when 190 of such bags were present before warehouse of applicant Dilawar Khan Bhatti, the same were recovered.

5. Learned Counsel in defence have pleaded for bail on the grounds that applicants are innocent and have been falsely implicated in this case. The calculated loss to the Government is only Rs.28,71,500/- (*Rupees twenty-eight lac seventy-one thousand five hundred*), out of which co-accused Agha Naseer Ahmed Durrani has already deposited almost Rs.25,00,000/- (*Rupees twenty-five lac*). No specific role has been attributed to applicants and prosecution has failed to collect sufficient evidence to connect them with the offence. They have relied upon the cases of *Muhammad Nadim v. The State and another* (2023 SCMR 184), *Dr. Abdul Rauf v. The State through D.A.G.* (2020 SCMR 1258), *Khalid Mehmood v. The State* (2020 SCMR 434), *Khair Muhammad and another v. The State through P.G. Punjab and another* (2021 SCMR 130), *Sabir Hussain v. The State* (1999 P Cr. L J 958), *Muhammad Boota v. The State* (2013 P Cr. L J 318), *Abdul Rashid Nasir and others v. That State* (2009 SCMR 517), *Muhammad Farooque v. The State* (2010 P Cr. L J 948), *Hussain*

Haqani v. The State (2000 P Cr. L J 161) and Muhammad Ilyas v. The State (2007 YLR 1024).

6. On the other hand, learned Counsel for F.I.A. has opposed bail to the applicants, but learned Deputy Attorney General submits that *prima facie* proper investigation has not been conducted. Further, learned Counsel for F.I.A. has taken exception to jurisdiction of this Court on the ground that the Court of Special Judge, Anti-Corruption (Central) and F.I.A. where the trial is pending is situated at Hyderabad and co-accused Agha Naseer Ahmed Durrani had filed a Criminal Bail Application No. S-1274 of 2022 before Circuit Bench of this Court at Hyderabad, which has been dismissed, as such as per Nazeer's case and Tariq Bashir's case, these bail applications may be filed before Circuit Court of this Court at Hyderabad. He has relied upon the case of The State through Advocate-General, N.-W.F.P. v. Zubair and 4 others (PLD 1986 Supreme Court 173).

7. I have heard parties and perused material available on record.

8. Insofar as objection to jurisdiction is concerned, no one disputes that alleged offence has been committed within the territorial jurisdiction of this Bench. Initially, FIR was registered at Police Station Jhangro situated within the limits of District Sukkur. Subsequently, Police Station F.I.A., Sukkur took up the investigation in this case. Both these Police Stations are situated at Sukkur within territorial jurisdiction of this Bench. The contention of learned Assistant Director (Legal), F.I.A. that the F.I.R. is addressed to Special Judge, Anti-Corruption (Central), Hyderabad and thus the Bench at Hyderabad has the jurisdiction is concerned, it may be stated that it is so because the Court of Special Judge, Anti-Corruption (Central) has not been established at Sukkur yet, and hence, the jurisdiction for a trial in the cases registered by F.I.A. Sukkur has been given to the Special Judge, Anti-Corruption (Central), Hyderabad as an additional assignment. But, in any case, this fact alone would not take away jurisdiction of this Bench from entertaining bail applications etc. in the matters registered within its territorial jurisdiction. To bring home this point further, learned Counsel has cited the orders in two bail applications i.e. **Cr. Bail App. No. S-772 of 2016** (Khaliq Nawab Khan Yousifzai v. The State) and **Cr. Bail App. No. S-533 of 2019** (Muhammad Din Dayo v. The State) earlier decided by this Court in the identical matters on 06.01.2017 and 15.11.2019, respectively and these case laws, cited as precedents, in fact resolves this issue satisfactorily.

9. Insofar as merits for the purpose of deciding these applications for post-arrest bail are, *prima facie*, the investigation does not seem to be properly conducted into the matter. From the papers available on record, it appears that misappropriated 500 ration bags were handed over to one Muneer Ahmed, purportedly a General Secretary, Bhutto Welfare Organization, Sukkur vide letter No. USC/ESTT/SUK/2022-0477 dated 27.08.2022. But surprisingly, 190 bags out of 500 bags were found lying in front of the godown of applicant Dilawar Khan Bhatti. There is no substance *prima facie* to show how these bags ultimately ended up in front of said godown and what is the role of said Muneer Ahmed in this whole episode and where are remaining 310 bags. When asked, Investigating Officer has said that Muneer Ahmed was found innocent during investigation, however, he could not explain that if Muneer Ahmed was not given the bags as per letter by co-accused Agha Naseer Ahmed Durrani, then under what authority and to whom Store In-charge Mushtaque Ali had given these ration bags and how 190 of such bags happened to be present at the place of recovery.

10. Applicant Maqbool Ahmed Bhatti is said to be a daily-wages employee of U.S.C., Sukkur. *Prima facie*, there is no evidence that he was entrusted with the misappropriated ration bags in any capacity or he had any say in disposing of or handing over the same to anyone. His presence along with 190 stolen bags requires further inquiry into the question as to whether he was aware of the said bags to have been misappropriated by his high-ups and further that he was in any capacity and to any extent its beneficiary. Applicant Aftab Ahmed Bhutto is said to be Area Manager, who was deputed by co-accused Agha Naseer Ahmed Durrani for monitoring the flood-relief-package activities. His role needs to be determined at the time of trial as *prima facie* neither his name is in FIR nor any incriminating evidence to connect him with the alleged misappropriation of 500 bags has been collected except that he being the Area Manager was working under co-accused Agha Naseer Ahmed Durrani. In addition, *prima facie*, there is no material that at any time, he was entrusted with the stolen stock or assigned any duty of transporting the same to the godown of applicant Dilawar Khan Bhatti.

11. Role of applicant Dilawar Khan Bhatti, from in front of whose godown, 190 ration bags were recovered by the local police also requires further inquiry in that the prosecution has yet to establish him to be recipient of the subject stock with the knowledge of being stolen or misappropriated by the officials of U.S.C. Besides,

Investigating Officer has calculated total loss to the Government as Rs.28,71,500/- (*Rupees twenty-eight lac seventy-one thousand five hundred*), out of which admittedly almost Rs.25,00,000/- (*Rupees twenty-five lac*) have been deposited by co-accused Agha Naseer Ahmed Durrani in the Government Treasury and remaining loss is only up to Rs.3,00,000/- (*Rupees three lac*). The challan has been submitted and the accused are not required for further investigation is not disputed by anyone. The case of prosecution is largely based on official documents, which are not likely to be tampered with by the applicants, who are in jail for the last almost ten months without any progress in the trial.

12. In view of above, these applications are **allowed** and the applicants are **admitted to post-arrest bail** subject to furnishing a solvent surety in the sum of Rs.1,00,000/- (*Rupees one lac*) each and P.R. bond in the like amount to be executed to the satisfaction of the trial Court.

13. Needless to mention here that observations as above are tentative in nature and not meant to affect merits of the case before the trial Court.

14. Instant Criminal Bail Applications are **disposed of** in the above terms. Office is directed to place a signed copy of this order in the captioned connected matters.

Abdul Basit

J U D G E