

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1698 & 1699 of 2022

Applicants : Agha Siraj Ahmed Pathan S/o Agha Shah
Muhammad Khan in CrI. B.A. No.1698/2022

Tufail Ahmed Khaskheli S/o Muhammad
Ismail Khaskheli in CrI. B.A. No.1699/2022

through Mr. Muhammad Ahmed Pirzada,
Advocate representing for both the Applicants

Respondent : The State
through Mr. Faiz H. Shah, Prosecutor
General, Sindh & Mr. Talib Ali Memon,
A.P.G. a/w Mr. Shahzad Fazal Abbasi,
Director ACE & Abdul Qadir Soomro,
Deputy Director/I.O. ACE Karachi

Date of hearing : 12.09.2023

Date of short order : 12.09.2023

ORDER

AMJAD ALI SAHITO, J -- Through these Bail Applications, applicants/accused seek pre-arrest bail in Crime No.03/2022 for the offence under Sections 409/420/468/471/34 PPC R/w Section 5(2) Act-II, 1947 registered at ACE, Karachi, after their bail plea has been declined by the learned Special Judge, Anti-Corruption (Provincial), Karachi vide order dated 29.08.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicants, the applicants are innocent and have falsely been implicated in this case; that no specific role has been assigned against the applicants; that the applicants were posted as Mukhtiarkar and Assistant Commissioner in the Board of Revenue and serving in the said department for last many years with untarnished career; that there is no incriminating evidence against the applicants; that the entry in the record of right was recorded in compliance of the directions issued by higher authorities; that entire case of the prosecution is based upon documentary evidence whose authenticity and validity would be

determined at the time of trial; that the applicants are no more required for further investigation. He lastly prays for confirmation of bail.

4. On the other hand, learned Prosecutor General, Sindh [hereinafter referred to as **"P.G."**] submits that the applicants are very much involved in this case as PW Shoukat Jokhio has denied from his signature while recording his statement u/s 164 Cr.P.C. before the learned Magistrate. He further submits that entry cannot be cancelled as an interim order has been operating in this case. Per learned P.G., sufficient material is available on record to connect the applicants with the commission of an alleged offence. Lastly, he opposes for confirmation of bail.

5. Heard arguments and perused the record.

6. The case of the prosecution is that 28-0 acres of land was leased out on temporary basis to M. Aslam Malik, Muhammad Sarwar Malik, Mrs. Hasan Ara Waseem, Mr. Kashif Jamal, Muhammad Eijaz Alam, Abdul Wahab and co-accused Muhammad Jameel for poultry farming purpose for a period of 30 years; however, after expiry of said period, the said land was fraudulently transferred in the name of Muhammad Jameel vide fake Entry No.23 dated 09.07.2011 village Form-VII-B, of Deh. Konkar, wherein the measurement of the land was shown to be 176 acres in place of 28-0 acres. Further, the entry was kept in the record of right when the FIR was lodged with a delay of about 11 years and no plausible explanation has been furnished by the prosecution. The applicants have received the order from the office of the District Officer (Revenue) City District Government, Karachi letter dated 09.07.2011 wherein the then District Officer (Revenue) Mr. Shoukat Jokihiyo directed the Mukhtiarkar concerned for keeping the entry in the record of right. From the face of the order, it appears that the application was filed by Mrs Farzana w/o Muhammad Jamil and 18 others requesting for transfer of their leasehold rights measuring 176 acres, same was allowed and 176-00 acres of Na-class No.152 Deh. Konkar Gadap Town was transferred in favour of M/s. Memon Dairy Cooperative Society through Chairman Muhammad Jameel.

7. After receiving the letter/order from the office of the District Officer (Revenue) the entry was kept in the record of right viz. Form-VII dated 09.07.2011. Further, learned counsel for the applicants argued that neither the applicants have cheated with the department nor committed any fraud but when the letter was

received from the office, they acted upon it. In support of this contention, he has produced a letter/order dated 09.07.2011 so also photocopy of an outward register which is available on pages 9 to 103. He further submits that in view of Section 52 of the Land Revenue Act if any entry kept in a record of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. Learned counsel for the applicants submits that in view of the above section, the entry was kept in the record of right. On the other hand, learned PG submits that the statement of D.O Revenue was recorded and he has denied it from his signature. When it was confronted with the, learned P.G. that the claim of the applicants is/was that based on the letter they have kept the entry in the record of rights. Whether the same/signature/letter was sent to the forensic expert about its genuineness he replied that DDO Shoukat Jokhio denied his signature and now it will be decided by the trial court whether the signature is genuine or forged. This sole ground is sufficient to bring the case of the applicants for further enquiry.

8. Further, the alleged Entry No.23 has not been cancelled by the authorities, the same is still available in the record of rights. The civil litigation is also pending before the competent court of law and the stay is operating in the favour of the main accused/beneficiary Muhammad Jameel. He has also filed a suit for declaration, injunction and damages wherein the claim of the accused was that by virtue of title documents, the plaintiff has been running a dairy farm on the suit premises for last many years and the official respondents have demolished the construction and subsequently FIR was lodged against him. Meanwhile, notices were issued and the defendant was directed to maintain status-quo. Further, the main accused Muhammad Jameel, who is a beneficiary of the instant case/alleged Entry No.23, has been granted bail and the allegation against the applicants is that they have committed cheating by making the said entry in the record of rights, whereas, learned counsel for the applicants categorically states that the applicants are not beneficiary of that entry.

9. The entire case of the prosecution depends upon the documentary evidence which is available with the prosecution. Things do not end here, the statement u/s 161 Cr.P.C. of PW-Faisal is available at Page wherein he disclosed that he appeared before the I.O. Inspector Muhammad Uris Zardari and admitted the conversion

of 30 years of lease land and instalment was also paid. The application was filed by the main accused Muhammad Jameel to the Member Land Utilization Board of Revenue Department Karachi wherein the minutes of the meeting of the Chief Minister Sindh held that “*examine and put up*” after scrutiny, the land was given to Jameel Ahmed as such he has also paid some installment but in the summary note, it is written that during this process the Hon’ble Supreme Court of Pakistan has passed an order in Suo Moto Case No.16/2011 banning all kinds of mutations/allotment/transfer or conversion of any state land or any transaction or entry in the record of rights in this regard in revenue record of Sindh or till the entire revenue record is reconstructed. The learned P.G. forcefully argued that due to the ban, no entry was kept on record of right but the same was forged. I have perused the record which reflects that DDO Revenue passed the order on 09.07.2011 and in compliance thereof, the entry was made on the same day 09.07.2011 much prior to the ban. The case has been challan the applicants/accused are no more required for further investigation. No purpose will be served to send them to jail

10. In view of the above, learned counsel for the applicants has made out case for the grant of bail in terms of subsection 2 of section 497 Cr.P.C. Resultantly, the instant bail applications were **allowed**. The interim pre-arrest bail granted to the applicants / accused vide orders dated 31.08.2022 in both bail applications were confirmed on the same terms and conditions. The Applicants are directed to attend the trial. However, it is made clear that if the applicants/accused misuse the concession of bail, the learned trial Court would be at liberty to take appropriate action.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

12. These are the reasons of my short order dated 12.09.2023.

JUDGE