

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1814 of 2023

Criminal Bail Application No.1847 of 2023

Applicant : Manzoor Qadir S/o Shafi Muhammad  
in CrI. B.A. No.1814/2023 Through M/s. Farooq H. Naek and  
Iftikhar Ahmed Shah, Advocates a/w  
M/s. Taimoor Ali Mangrio, Syed Qaim  
Ali Shah, Advocates

Applicant : Khair Muhammad S/o Ghuram Khan  
in CrI. B.A. No.1847/2023 Through Mr. Shah Nawaz Dahri,  
Advocate

Respondent : The State  
through Mr. Talib Ali Memon,  
Assistant Prosecutor General, Sindh  
a/w Shahzad Fazal Abbasi, Director &  
Inspector Zahid Hussain Mirani,  
Directorate ACE Sindh

Date of hearing : 05.09.2023

Date of short order : 05.09.2023

### **ORDER**

**AMJAD ALI SAHITO, J** – By this single order, I intend to dispose of both the criminal bail applications; whereby the applicants seek post-arrest bail in Crime No.01/2022 registered under Sections 409, 420, 468, 471, 34 PPC R/w Section 5(2) Act-II, 1947 at PS ACE, after their bail plea has been declined by the Special Judge, Anti-Corruption (Provincial), Karachi vide orders dated 15.08.2023.

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 applicant in CrI. B.A. No.1814/2023, out of 21 accused 17 accused have already been granted bail by the learned trial Court, as such, the case

of the applicant is identical to the co-accused and the grant of bail is the rule and refusal is an exception, as such, the applicant is entitled for the concession of bail on the rule of consistency; that the entire property owned by the Sindh Muslim Cooperative Housing Society (hereinafter referred as **“Society”**) and the said property was transferred in the year 1954 since then the Society is in possession; that vide letter dated 27.12.1957 Assistant Secretary to the Chief Commissioner Karachi informed to the Collector Karachi that the Chief Commissioner, Karachi has agreed to the allotment of the Society of 20 ft. wide land strip on both sides of the main Karachi – Malir Road in front of the land already allotted to that society on payment of full market value. He further submits that said note was submitted to the Chief Commissioner. In support of his contention, he has relied upon the documents which are available from Pages 167 to 185. Learned counsel for the applicant further argued that in the year 2006, the Society did not object to the conversion of the plot in question viz. Plot No.193 Block “A” situated on Shahrah-e-Faisal from residential to commercial and thereafter NOC was issued with certain conditions by the District Government, Karachi; that finally the proposed map was prepared and thereafter such entry was kept by the applicant in Crl. B.A. No.1847/2023 on the basis of record. In support of his contention, he has further relied upon the documents which are available from pages 187 to 203, in which the total measurement of the plot was shown as 1121.01 square yards. He further submits that the entire episode was prepared by the Society that converted the plot from residential to commercial and after completing all formalities only sent commercialization of the plan to SBCA but the applicant was falsely implicated in this case as the SBCA has only given the approval when the plot was converted and such map was approved as such the applicant has not committed any offence. The co-accused have been granted bail against whom a similar role was assigned. So far as the absconsion is concerned, initially, the applicant with permission from the competent authority left the country for

medical treatment and during his stay abroad, the instant FIR was registered; however, after getting the treatment when he returned to Pakistan, he was arrested and since then he is in jail. He lastly prays for a grant of bail. In support of his contention, he has relied upon the cases reported as 2009 SCMR 299 (Mitho Pitafi vs. the State), 2017 PCRLJ Note 167 (Athar Ali Abbasi vs. the State and another), 2013 PCRLJ 672 (Meer Muhammad vs. The State), 2010 MLD 220 (Pir Bakhsh vs. The State and others), 2019 PCRLJ Note 33 (Riaz Ahmad Khan vs. The State), 1996 SCMR 1132 (Saeed Ahmed vs. The State), 2012 SCMR 1137 (Ehsan ullah vs. The State), 2021 SCMR 1295 (Saeed Yousuf vs. The State and another), 1995 SCMR 170 (Saeed Ahmed vs. The State), 2002 SCMR 282 (Muhammad Saeed Mehdi vs. The State and 2 others), 2023 YLR Note 35 (Shabir Ahmed vs. The State), 2005 PCRLJ 1954 (Amanullah Shaikh and others vs. The State), 2021 SCMR 2092 (Muhammad Nasir Shafique vs. The State), 2019 YLR 2891 (Jibran Rasheed vs. Siraj ul Haq and another), 2023 PCRLJ 350 (Muhammad Azam Khan Swati vs. The State and another), 2014 YLR 1723 (Ahmed Nawaz Solangi vs. Court of Special Judge Anti-Corruption (Central) Hyderabad and another), 2011 SCMR 161 (Abid Ali alias Ali vs. The State), 1969 SCMR 233 (Haji Wali Muhammad vs. The State), 2019 SCMR 1914 (Husnain Mustafa vs. The State and another), 2000 SCMR 107 (Mian Manzoor Ahmad Watto vs. The State) and PLD 1972 Supreme Court 81 (Manzoor and 4 others vs. The State).

4. Learned counsel for the applicant appearing in CrI. B.A. No.1847/2023 while adopting the above arguments submits that the applicant being Mukhtiarkar was duty bound to keep the entry in the record of rights which he did so, otherwise he has not committed any offence.

5. Learned Addl. P.G. duly assisted by the officials of the Anti-Corruption Establishment, Karachi opposes for grant of bail on the ground that they are nominated in the FIR.

Further, the applicant in CrI. B.A. No.1814/2023 was fugitive from law.

6. I have heard the learned counsel for the parties and have gone through the material available on record.

7. Admittedly, out of 21 accused, 17 accused have already been granted bail by the learned trial Court on the ground that allegations against them are general in nature. Learned counsel for the applicants pleaded that since all accused have been granted bail hence the present applicants are also entitled for the concession of bail on the rule of consistency. The rule of consistency is always taken into consideration by the superior courts since a long because a person cannot be denied for the grant of bail whose case is at par with co-accused who has already been released on bail. The Courts have to give equal treatment to the accused persons having one and the same role in the same case. The reliance is placed in some cases of Muhammad Fazal @ Bodi vs. The State (1979 SCMR 9), Khadim Hussain vs. The State (1983 SCMR 124) and Muhammad Daud and another vs. the State and another (2008 SCMR 173).

8. So far as the merit of the case is concerned, in the instant case, the allegation against applicants is that they have given approval of the building plan and accused Kher Muhammad kept the entry in the record of rights. The documents produced by the learned counsel for the applicants reflect that originally Karachi Municipal Corporation owned the said plot and subsequently the same was given to the Society in the year 1954 through agreement and thereafter the entire record was with the society. In the year 1957, the Chief Commissioner, Karachi had agreed to allot 20 ft. wide land strip on both sides of the main Karachi – Malir Road to the society and thereafter, such note was prepared and after taking payment from the owner of Plot No.193 Block “A” situated on Shahrah-e-Faisal, the same was allotted to the owner of the property and subsequently, the master plan was prepared by the Chairman of the Society

who wrote a letter to the Master Plan Group Offices in the year 2006 with request to convert the same from residential to commercial one. In the entire episode/documents were prepared by the Society and a building plan was prepared based on the record. However, it is yet to be determined at the trial as to how the applicants are involved in the commission of offence when the evidence will be recorded and the entire documents prepared by the Society will be examined.

9. So far as the arguments raised by learned A.P.G. that the applicant Manzoor remained fugitive from law having no force as before registration of the FIR the applicant left the country with prior permission from the Government of Sindh and thereafter the instant FIR was registered. Reliance is placed in the case of Saeed Yousuf vs. The State (2021 SCMR 1295); wherein the Hon'ble Supreme Court of Pakistan has held that the accused could be granted bail if his case was otherwise made out on merits and his mere absconsion would not come in the way of his bail. The applicants are in jail and they are no more required for further investigation. Their further detention shall not improve the prosecution case. At the bail stage, only tentative assessment is to be made and deeper appreciation is not permissible.

10. In view of the above, learned counsel for the applicants have made out case for a grant of post-arrest bail. Accordingly, the instant bail applications were allowed vide short order dated 05.09.2023.

11. These are the reasons of my short order dated 05.09.2023.

12. 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.

JUDGE