

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-540 of 2023

Applicant: Muhammad Arif son of Abdul Aziz,
Through Mr. Ishrat Ali Lohar,
Advocate.

Respondent: The State through Mr. Bashir Ahmed Almani,
Deputy Attorney General for Pakistan.

Date of hearing: 25.09.2023
Date of Order: 25.09.2023

ORDER

ARSHAD HUSSAIN KHAN, J.- Through instant criminal bail application, the above named applicant / accused seeks his post-arrest bail in Crime No.01 of 2023, under sections 4, 5 & 23 of FER Act (Amendment Act 2020) r/w Section 109, 34 PPC, registered at PS FIA Crime Circle, Hyderabad, after his bail plea was declined by the learned 2nd Additional Sessions Judge, Hyderabad, vide order dated 15.04.2023.

2. The facts of the prosecution case in nutshell are that pursuant to enquiry No.03 of 2023 of FIA Crime Circle Hyderabad, registered on receipt of credible information from the sources that illegal business of Hawala / Hundi is being carried out by the applicant / accused and his wife Mst. Sahar; hence, a raid was conducted on 07.01.2023 by Inspector Hassan Jaferi alongwith his subordinate staff and applicant / accused was apprehended under the bridge near Bhitai Nagar Police Station, Hyderabad while he was carrying plastic shopping bags. On enquiry, he voluntarily disclosed that he alongwith his partners is involved in illegal business of Hawala / Hundi. Thereafter, the police recovered from his possession one VIVO mobile phone, cash amount of Rs.3,92,62,500/- and his original CNIC; hence, instant case was registered against him.

3. Per learned counsel for the applicant, the FIR has been lodged with delay of about 02 years without any plausible explanation. He further contended that the alleged offence with which the applicant /

accused is charged does not fall within the prohibitory clause of section 497 Cr.P.C and section so applied in this case carries punishment upto 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 which can be determined at the time of trial, hence, requires probe. He urged that in view of the facts of the present case, the false implication of applicant / accused cannot be ruled out as no independent witness has been associated by the complainant. He next submitted that the FIR is not sustainable in law as the sections applied in the present case relates to the 'Foreign Currency', however, the recovery allegedly effected from the present applicant / accused is only in 'Rupees' / 'PKR' and not in foreign currency or coins etc. He lastly urged that co-accused have already been granted bail by the learned trial Court, therefore, the rule of consistency is also applicable upon the present applicant / accused. Further urged that the above said facts create doubts, hence, needs further inquiry and as such the applicant / accused is entitled for concession of bail. In support of his arguments he has relied upon the case laws reported in 2023 YLR 1447, 2023 YLR 166, 2022 YLR 2052, 2017 MLD 146, 2017 PLD S.C 733 and 2016 SCMR page-18.

4. Learned Deputy Attorney General vehemently opposed to the grant of bail to the applicant / accused on the ground that he is specifically nominated in FIR and recovery was effected from his possession, therefore, he is not entitled to the concession of bail in his favour at this stage.

5. Heard argument and perused the record.

6. From bare perusal of the Foreign Exchange Regulation Act, 1947, (to be referred hereinafter as FER, Act 1947), it appears that the same is to regulate certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion. In the present case the applicant / accused was allegedly arrested with Rs.3,92,62,500/-, merely possessing of PKR does not constitute an offence under FER Act 1947. Further, the co-accused with the same allegation have already been granted pre-arrest bail by the learned trial

Court, therefore, the rule of consistency is also applicable to the present applicant / accused. The offence with which the applicant / accused is charged does not fall within the prohibitory clause of section 497 Cr.P.C as punishment of the same as provided by law is with Rigorous Imprisonment for a term which may extend to 05 years or with fine or with both.

7. Admittedly, the offence does not fall within the prohibitory clause of Section 497 Cr.P.C, hence, in the light of the principles and law laid down by the Hon'ble Supreme Court in cases where offences fall within non-prohibitory clause of Section 497 Cr.P.C., grant of bail has to be considered in favour of accused as a rule, but may be declined in exceptional cases. Reliance can be placed on the cases of *Zafar Iqbal v. Muhammad Anwar and others* [2009 SCMR 1488] and *Muhammad Tanveer v. The State and another* [PLD 2017 SC 733].

8. The record further shows that the applicant/accused is not previous convict nor hardened criminal and has been in continuous custody since his arrest and is no more required for further investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled principle of law that bail cannot be withheld as punishment. It is also well settled that truth or otherwise of the charges could only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. Reliance in this regard can be placed on the case of *Muhammad Nadeem Anwar and another v. National Accountability Bureau and others* [PLD 2008 SC 645].

9. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie the applicant/accused has succeeded to bring his case within the purview of further inquiry and as such he is entitled to bail and therefore vide a short order dated 25.09.2023 the applicant / accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant / accused misuses the bail, then the trial Court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 25.09.2023

JUDGE

Ahmed/Pa,