

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-379 of 2024
[Muhammad Bilal v. The State]

Criminal Bail Application No.S-387 of 2024
[Ehtisham Khan v. The State]

Criminal Bail Application No.S-388 of 2024
[Ehtisham Khan v. The State]

Criminal Bail Application No.S-391 of 2024
[Babar Hussain Zaidi v. The State]

Criminal Bail Application No.S-398 of 2024
[Deepak Piryani v. The State]

Criminal Bail Application No.S-399 of 2024
[Ghulam Muhammad v. The State]

Criminal Bail Application No.S-400 of 2024
[Deepak Piryani v. The State]

Criminal Bail Application No.S-401 of 2024
[Ghulam Muhammad v. The State]

Criminal Bail Application No.S-406 of 2024
[Syed Shams-ul-Hassan Zaidi v. The State]

Criminal Bail Application No.S-416 of 2024
[Syed Ghayasuddin v. The State]

Criminal Bail Application No.S-428 of 2024
[Syed Shams-ul-Hassan Zaidi v. The State]

Criminal Bail Application No.S-444 of 2024
[Rahim Bux v. The State]

Criminal Bail Application No.S-445 of 2024
[Deen Muhammad v. The State]

Criminal Bail Application No.S-450 of 2024
[Ghulam Yaseen v. The State]

Criminal Bail Application No.S-459 of 2024
[Muhammad Asif v. The State]

Criminal Bail Application No.S-474 of 2024
[Afzal Ali v. The State]

Criminal Bail Application No.S-495 of 2024
[Saifullah Brohi v. The State]

Applicants:

Muhammad Bilal, Account Assistant CFO HESCO [Cr. B. A. No.S-379 of 2024], Deepak Piryani, Account Assistant CFO HESCO [Cr. B. A. No.S-398 & 400 of 2024] and Ghulam Muhammad, Accounts Assistant CFO HESCO [Cr. B. A. No.S-399 & 401 of 2024] through Mr. Ishrat Ali Lohar advocate along with Mr.Zulfiqar Ali Korai advocate.

Ehtisham Khan, Account Assistant CFO HESCO [Cr. B. A. No.S-387 and 388 of 2024] through Syed Gohar Ali Shah advocate.

Syed Babar Hussain Zaidi, ALM HESCO [Cr. B. A. No.S-391 of 2024] and Syed Ghayasuddin CFO HESCO [Cr. B. A. No.S-416 of 2024] through Syed Tarique Ahmed Shah advocate along with Mr. Ammar Ahmed advocate.

Syed Shams-ul-Hassan Zaidi, Assistant Audit Officer [Cr. B. A. No.S-406 and 428 of 2024] through Mr. Masood Illahi Sahito advocate.

Rahim Bux, Assistant Manager, CFO, HESCO [Cr. B. A. No.S-444 of 2024] and Deen Muhammad, having charge of Assistant Manager Budget, CFO, HESCO/signatory on behalf of Deputy Manager Banking/Manager Finance CPC, Hyderabad [Cr. B. A. No.S-445 of 2024] through Mr. Ahsan Gul Dahri advocate.

Ghulam Yaseen Brohi, Authorized, NBP Sanghar Branch [Cr. B. A. No.S-450 of 2024] through Syed Noor-e-Mustafa advocate.

Muhammad Asif, Branch Operation Manager, UBL Samaro Branch [Cr. B. A. No.S-459 of 2024] through Mian Taj Muhammad Keerio advocate along with Ms. Kahkashan and Mr. Aijaz Ali Rajar advocates.

Afzal Ali Arain, Authorized, NBP Sanghar [Cr. B. A. No.S-474 of 2024] through M/s. Waqar Alam Abbasi and Mehtab Nirban advocates.

Saifullah Brohi, Authorized, NBP Sanghar [Cr. B. A. No.S-495 of 2024] through Mr. Zain-ul-Abdin Sahito advocate.

Respondent:

The State through Mr. Bashir Ahmed Almani, Assistant Attorney General for Pakistan along with Sub-Inspectors Waqar Ahmed, Ghulam Akbar and Babar Ali.

Mr. Sattar Bux Soomro, Additional Director General (Legal) HESCO and Faizullah Dahri C.F.O. HESCO present.

Date of hearing: 13.05.2024, 14.05.2024 & 21.05.2024.

Date of order: 29.05.2024.

ORDER

OMAR SIAL, J.: The applicants are either Hyderabad Electric Supply Company (HESCO) employees or bankers. Their specific designation and the office in which they are posted are written next to their names in the title of this order.

2. All the captioned bail applications arise out of four F.I.Rs:

- (i) **F.I.R. No. 07 of 2024** registered at the F.I.A. Crime Circle in **Hyderabad** under sections 409, 419, 420, 467, 468, 471, 477-A and 109 P.P.C. and section 5 (2) of Prevention of Corruption Act, 1947.
- (ii) **F.I.R. No. 03 of 2024** registered at the F.I.A. Crime Circle in **Mirpurkhas** under sections 409, 419, 468, 471, 477-A and 109 P.P.C. and section 5(2) of Prevention of Corruption Act, 1947.
- (iii) **F.I.R. No.03 of 2024** registered at the F.I.A. Crime Circle in **Shaheed Benazirabad** under sections 409, 420, 468, 471, 477-A and 109 P.P.C. and section 5(2) of Prevention of Corruption Act, 1947.
- (iv) F.I.R. No. 04 of 2024 registered at the F.I.A. Crime Circle in **Shaheed Benazirabad** under sections 409, 420, 468, 471, 477-A and 109 P.P.C. and 5(2) of Prevention of Corruption Act, 1947.

3. All the F.I.R.s are interlinked, so it would be appropriate to dispose of them with this single order.

4. The F.I.A. has initiated an enquiry concerning the misappropriation of funds from the salary accounts of HESCO employees from 2017 to 2023. Allegedly, the misappropriation caused a financial loss, the quantum of which is still to be finally determined.

5. I have heard the learned counsels representing the applicants. I have also heard the learned Assistant Attorney General for Pakistan assisted by F.I.A. officials. For the sake of brevity, the counsel's arguments are not being reproduced but are reflected in my observations and findings below. Neither party cited any cases.

6. It has been explained to me broadly that HESCO has a Head Office in Hyderabad and satellite offices in 42 places spread out within the area it services. The current lot of HESCO employees are posted at the Head Office or the satellite offices in Mirpurkhas, Sanghar, Shaheed Benazirabad and Umerkot. The Head Office has various departments, including Audit, Budget, and Banking. All three fall within the umbrella of the Finance Department. There is a Drawing and Disbursement Officer (D.D.O.) at the Head Office, which function is performed by the Executive Engineer(s). Funds are released through cheques signed jointly by the D.D.O. and the Divisional Accounts Officer.

7. The administration structure at the head Office is replicated at each of the 42 satellite offices. Budgets for the operations of each satellite office flow from the Head Office to the individual satellite. The satellite sends details of its requisite salaries/expenses to the Head Office each month, where those disbursements are scrutinized and processed. These demands and bills, on both sides, i.e. the Head Office and the satellite offices, go through the desks of the Budget and Bank departments and finally to the D.D.O's. office, which then approves the issuance of a cheque, which is taken to a bank for encashment. Several persons with varying job titles, descriptions, and duties work in each department. The prescribed responsibilities of each department and each employee have yet to be determined by the F.I.A. In the seven years that have passed, these positions have, in many instances, been manned by different persons, some of whom were posted at the head office and others in the various satellite offices.

8. The allegation against all the HESCO applicants is that they were a ring in the chain which benefited from manipulating employee cheques and accounting records to its benefit. There is no complaint against them from HESCO. On the other hand, the banker applicants allegedly sinned by processing cheques from HESCO employees that were presented for clearance at the branch where these applicants worked. There are no complaints against these bankers from the Bank or HESCO. The applicants are accused of committing fraud, forgery, cheating, falsification of accounts, criminal misconduct, colluding, and conspiring with each other and numerous other

personnel to successfully execute an alleged conspiracy for embezzling HESCO funds.

9. The action against the applicants was not initiated on the complaint of HESCO. The F.I.A. initiated it based on what the learned A.A.G. said was a "*source report*". Learned A.A.G, however, could not justify, and Inspector Akbar chose to remain silent when queried regarding the reason the "source" could not be disclosed. What was so mysterious or secretive about it? Article 8 of the Qanoon-e-Shahdat says that no police officer can be compelled to say where he got the information of the commission of an offence. Yet, safeguards to exercise this privilege are provided in various statutes and rules. One such rule is Rule 4 of the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002. This rule requires that "*The Deputy Director or an officer above the rank of Deputy Director may initiate verification of a complaint to ascertain the identity of the complainant or informer and genuineness of the complaint or information. No action shall be taken on any anonymous or pseudonymous complaint.*" Nothing has been produced to show that Rule 4 was complied with. The learned A.A.G. was also unclear whether such safeguards from unnecessary harassment of a person had been complied with. I am cognizant that this is a bail application; hence, I have not delved deeper. However, an adverse inference is drawn from the State's blanket denial to disclose the source.

10. It would be naive to think that this Court can fully grasp HESCO's corporate and administrative structures, inner workings, and accounting, budget and audit procedures in three hearings. Suffice it to say from the briefing given to this Court by Mr. Faizullah Dahri on the administrative, accounting and audit procedures and the hierarchy of persons who manage these functions; it appears to be intricate and complex. Further complicating things are the frequent transfers and postings of personnel who man these positions. The result of a tentative assessment is that to pin the blame on any one person in this episode is a rather tricky and difficult task for the F.I.A. at the moment and requires more time and resources to sort out. All the persons who have been made accused were employees of HESCO and commercial banks, who held a designation through which the documentation passed on its way either to or from the Head Office, the satellite offices and some banks. I understand from counsels that the

documentation to review and analyse is in the hundreds if not thousands. The F.I.A. requires much more work to reach a level where the collected evidence will stand the test of legal scrutiny. Be that as it may, a person cannot be incarcerated and declined his fundamental rights in the interim period.

11. It is noteworthy that the F.I.A. still struggles to find any money trail of the ill-gotten money back to the applicants. It is not in a position to say how many employee salary accounts were manipulated. Nor is the F.I.A. in a position to show what loss each person caused in apportioning the phenomenal sum they say the applicants are liable to have embezzled. I have tentatively seen a couple of examples of the evidence on the charge of forgery in a valuable security. If the couple of examples I have seen represent the rest of the evidence, then F.I.A. no doubt has a hard battle to fight in Court.

12. Equally noteworthy is that internal and external auditors of HESCO did not discover the discrepancies for seven years. There do not seem to be audit reports on which HESCO relies, nor what to say of the State relying upon for its prosecution. I was informed that the HESCO management told the F.I.A. that an internal audit was being conducted. Learned A.A.G. acknowledges that the result of that audit is still not out. As skilled as the F.I.A. Investigators may be, but they can surely not replace the wisdom of experts in audit and accounting procedures. Relying on F.I.A.'s investigators' accounting and audit knowledge to deny people their right to liberty and life would not be appropriate or justifiable.

13. After seven years, F.I.A., not HESCO, discovered that a fraud of such a magnitude had occurred in HESCO. Better late than never, yet F.I.A.'s failure to detect this crime earlier raises the question of F.I.A.'s effectiveness. F.I.A.'s official responsibilities are much more significant and are many. If such is its performance, then it may be a cause of worry for the whole nation. The Agency has some talented personnel, as are the three Inspectors investigating this case, yet it is apparent that the Agency lacks funds and training for its investigators.

14. It is apparent that the F.I.A. has used its powers to register cases and arrest those accused in a pre-mature, mechanical and callous manner with little regard for people's right to dignity

enshrined as a fundamental right in our Constitution. Law enforcement agencies cannot be permitted to have such unbridled powers. Those in command of the Agency should ensure that its investigators and officers understand that not every case merits an immediate arrest. Arrests should be made as a last resort based on realistic and reasonable grounds. The trigger-happy reactions of law enforcement agencies in arrests must be curtailed and strictly regulated. It is pertinent to note that Rule 3(2) of the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 provides that:

(2) After an inquiry or investigation has been registered, the inquiry or investigation shall proceed with care and discretion, and no undue publicity shall be given to it. Special care shall be taken to ensure that no unnecessary damage is caused to the prestige, reputation and dignity of any public servant involved.

15. Upon a tentative assessment, it appears that by arresting persons left, right and centre based on incomplete evidence, the F.I.A. may be in breach of the above-cited Rule. It must not be forgotten that in **Shahzada Qaiser Arafat vs The State (PLD 2021 SC 708)**, the Supreme Court has ordered that "*investigating officers should not mechanically arrest a person accused of having committed a cognizable offence; rather, they must exercise their discretion in arresting such person judiciously by applying their mind to the particular facts and circumstances of the case and consciously considering the question: what purpose will be served and what object will be achieved by arrest of the accused person?*" The same sentiment was echoed earlier in the case of **Mst. Sughran Bibi vs The State (PLD 2018 SC 595)** in which the Court held that: "*Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course and unless the situation on the ground so warrants, the arrest is to be deferred till such*

time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.”

16. In the current case, upon a tentative assessment, as also mentioned above, the F.I.A. has acted prematurely in exercising its power of arrest and thus may be in breach of the above-cited judgments. As observed by the Supreme Court in **Taufiq Asif vs General (Retd.) Pervez Musharraf and others** (C.P. No. 3797 of 2020 Judgment passed on 10.01.2024): *“Failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system established by the Constitution. Judgments of this Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution. This obligation reflects a fundamental commitment to preserving the integrity and sanctity of the Supreme Court.*

17. Evidence in this case is documentary and is all in F.I.A.'s possession. There is little the applicants can do to tamper with it. The State raised no flight risk concerns. Some of the offences are bailable, whereas the others, though not bailable punishment, fall within the non-prohibitory clause of section 497 Cr.P.C.¹ I am also drawn to the wisdom of the Supreme Court in **Chairman NAB vs Nisar Ahmed Pathan (PLD 2022 SC 475)**, where the Court very meaningfully observed that: *“Where two opinions can reasonably be formed based on the same material, the courts should prefer and act upon that which favours the accused person and actualises his fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention. To err in granting bail is better than to err in declining, for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail. Still, no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial.”* F.I.A. may have a case, but that is for them to prove at trial.

¹ 409 (non-bailable, 10 years to imprisonment for life), section 419 (non-bailable, 7 years or fine), 420 (bailable, imprisonment of 7 years or fine), 467 (non-bailable, 10 years to imprisonment for life), 468 (non-bailable, imprisonment for 7 years or fine), 471 (bailable, punishment as prescribed for forgery which is 2 years), 477A (bailable, imprisonment of 7 years or fine).

18. There is yet another factor I have taken into account. I have been told by the counsels that there could be up to a few dozen persons who are accused in similar roles but at other satellites. Only the first lot of 13 persons have filed these bail applications. Considering the tactics that counsels historically deployed in the past in cases with a large number of persons accused, the trial in the current case could potentially entail 44 lawyers. Accordingly, 44 cross-examinations and then 44 arguments. Realistically, it is hard to imagine when this trial, which is yet to begin, will actually end. Does the State expect that the applicants be kept incarcerated till the end of the trial? HESCO and the State need to deal with this episode in a more effective manner, a manner that will yield results. Simply continuing to aimlessly arrest and incarcerate such a large group of people on evidence, which at the moment appears incomplete, without any regard for their right to dignity, is not proper, not civil, warned against by the Supreme Court, nor permitted by the Constitution.

19. Before parting with this order, I deem it appropriate to record my appreciation for the assistance rendered to the Court by HESCO's Chief Financial Officer, Mr. Faizullah Dahri and F.I.A.'s. three young inspectors. This was a highly complex case to understand, and their assistance made it easier to grasp and make sense of.

20. Let a copy of this order be sent to the Chairman HESCO and the Director General F.I.A. to facilitate reference to the observations made in this opinion. Whatever the background, F.I.A. seems to have certainly stumbled across what seems to be a financial scam of substantial depth within HESCO. While cooperating fully with the law enforcement agencies in the investigation, it must also be ensured by HESCO that it immediately deploys effective safeguards against a repeat of such an incident. Director-General F.I.A. is requested to consider deploying more manpower and financial resources to the case. The three young investigators have worked well, but it may be beneficial if a senior investigator supervises the investigation. Director-General F.I.A. shall also ensure that the Agency complies with the directions of the Supreme Court and uses the power of arrest in line with its directives and observations in the cases referenced above. Exercising the power of arrest in cases of white-collared crime should be sparingly used as a last resort and premised on genuine apprehensions.

21. The thoughts, reasons, and observations above make me conclude that the case against the applicants is one of further inquiry. The applicants have made out a case for the concession of bail. Each is granted post-arrest bail subject to furnishing a surety of Rs. 200,000 and executing a P.R. Bond for the same amount to the satisfaction of the Additional Registrar of this Court.

JUDGE

Abdullah Channa/PS
