

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Kausar Sultana Hussain
Justice Jawad Akbar Sarwana

Cr. Bail Application No. D-1387 of 2024

Cr. MA Nos. 9004/2024 & 9246/2024

Applicant/Accused: Mossin Wali S/o Shahinshah Wali
through Mr Shaikh Javed Mir,
Advocate

State: Through Mr Kazi Abdul Hamid
Siddiqui, Assistant Attorney
General

Complainant Salman Hassan s/o Syed Basher
Ul Hassan through Mr Ameet
Kumar, Advocate

Date of hearing: 19.07.2024

Date of decision: 26.07.2023

COMMON ORDER

Jawad A. Sarwana, J.: On 02.07.2024, this Court passed a Short Order on even date allowing bail to the Applicant/Accused of Rs.10,000,000 (Rupees One Caror only), which bail amount was about less than half of Rs.21,091,201 (Rupees Two Caror Ten Lac Nighty-one Thousand Two Hundred One only), the amount mentioned in the Interim Charge Sheet dated 06.06.2024 allegedly misappropriated, diverted and siphoned of by the Applicant/Accused from the Complainant's senior citizen father. On 08.07.2024, when the bench gave reasons, the Applicant/Accused had not put up any bail. Instead, on 10.07.2024, the Applicant/Accused filed an application under Section 561-A Cr.P.C. (MA No.9004/2024) seeking a reduction of the bail from Rs.10,000,000 (one crore) to Rs.1,000,000 (ten lacs). Thereafter, on the very next day, i.e. 11.07.2024, the Complainant filed an application under Section 561-A Cr.P.C. (MA No.9246/2024) seeking an enhancement of the bail from Rs.10,000,000 (one crore) to Rs.21,091,201 (Rupees Two Caror

Ten Lac Ninety-one Thousand Two Hundred One only). By this Common Order, we intend to dispose of MA nos.9004/2024 and 9246/2024. The applications involve the same impugned Orders dated 02.07.2024 and 08.07.2024 and arise out of the same FIR No.12/2024.

2. Counsel of the Applicant/Accused has submitted that neither the Applicant/Accused nor his family have any immovable properties, savings or assets to arrange the amount of surety. The Applicant/Accused is a family man and has already undergone spinal surgery. Therefore, the bail amount may be reduced. When we queried the Counsel for the Applicant/Accused if he had submitted any contemporaneous evidence and/or documentary proof in support of his submissions either to demonstrate his medical grounds or any financial constraints, he candidly conceded that the Accused/Applicant had none to offer accept to seek the mercy of the Court.

3. Yet according to the information presently available on record, it appears that the Applicant/Accused was a seasoned banker having apparently almost 20 years of banking experience, having served in three/four different banks, he was a person of means, and, after leaving HBL in 2020, entered into the real estate business while passing off as a Branch Manager of HBL to the Complainant's father whom he knew for a long time. There is a direct allegation against the Applicant/Accused in FIR No.12/2024 dated 23.05.2024, and he has been implicated in the crime as per the several Statements obtained and referenced by the IO. Additionally, the Interim Charge Sheet dated 06.06.2024 suggests that the fake/bogus Term Deposit Receipts (TDR) have also been scrutinized by forensics, his former Bank, HBL, etc., as positively fake and bogus, and the same also do not match with the format of actual HBL TDR. If this is momentarily presumed to be correct, the misappropriated/embezzled funds of Rs. 2.1 Crore cannot have entirely vanished into thin air. Thus, for the

reasons discussed in the Orders dated 02.07.2024 and 08.07.2024, this Court, based on the material placed before it by the Prosecution, was inclined to grant the Applicant/Accused bail by furnishing solvent surety of Rs.1 Crore and P.R. bond in the like amount to the satisfaction of the Nazir of this Court. The sum of Rs. 1 Crore being equal to about 50% of the misappropriated/embezzled amount of Rs. 2.1 Crore.

4. The Applicant/Accused has produced neither additional material nor brought on record any new facts in MA 9004/2024 to dislodge the amount of bail of Rs. 1 Crore fixed by this Court as of 02.07.2024 to grant bail to the Applicant/Accused. Neither any plausible nor reasonable grounds have been disclosed by the Applicant/Accused to reduce the bail amount. The application for reduction of bail has been filed within less than 10 days from the bail granting order of 02.07.2024, and no real intent or effort has been demonstrated in MA 9004/2024 to suggest that the accused has suffered unnecessarily for reasons beyond his control, with the bail amount fixed at Rs.1 Crore. In our view, the bail amount is in line with the gravity of the charge against the accused and also consistent with this Court exercising its inherent powers read in the light of Section 5(7) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984. The Applicant/Accused was a professional banker with considerable experience and dealing with the Complainant for almost a lifetime. He breached the Complainant father's trust and his fiduciary duty as a banker; his intentions appeared premeditative (which will be the Prosecution's case to prove), apparently misappropriating/embezzling funds of Rs.2.1 Crore, which would be safely parked and may be liquidated to put up the bail of Rs.1 Crore. The Applicant/Accused took advantage of the earnings of a senior citizen. The funds allegedly usurped were used for personal gains and may well be concealed/hidden at the present moment. According to the verbal statement of the IO, the Applicant/Accused private bank account presently has no money. Yet having a low account balance

at present cannot be justifiable grounds for reducing the bail amount now that the misappropriated/embezzled funds of Rs.2.1 Crore have disappeared, having already been moved or even held outside the banking system (lockers, for example). Based on the tentative examination of the facts and circumstances of the case, the quantum of the bail amount of Rs.1 Crore (50% of the misappropriated/embezzled amount of Rs.2.1 Crore) is reasonable, less than the misappropriated/embezzled amount mentioned in the Interim Charge Sheet, and given the amount misappropriated/embezzled by the Applicant/Accused, the bail amount of Rs. 1 Crore neither constitutes punishment nor is it excessive nor beyond the means of the Applicant/Accused.

5. We now turn to the MA 9246/2024 filed by the Complainant, praying to this Court to enhance the bail amount to the same amount as that mentioned in the FIR and the Interim Challan submitted by the IO. The Complainant has neither furnished any fresh information nor case law supporting his prayer. It is a trite proposition that while deciding a bail application, the High Court exercises special jurisdiction and is not beholden strictly to any statutory provision of the Cr.PC, so long as the quantum of the bail is within the contours of reasonableness in the peculiar facts and circumstances of the case, and even otherwise, in certain situations, the Court does not even need to give any reasons for deciding upon a particular bail amount.¹ Given the foregoing, we have given ample reasons in this Common Order for concluding the bail amount be fixed at Rs.1 Crore, and the Complainant's MA no. 9246/2024 has no legs to stand.

6. Therefore, we find that the Applicant/Accused has failed to make a case for reducing the bail from Rs. 1 Crore to Rs. 10 lacs and the Complainant has equally failed to make a case for enhancement

¹ Allied Bank of Pakistan v. Khalid Farooq, 1991 SCMR 599; Chaudhry Shujat Hussain v. The State, 1995 SCMR 1249; and Sikandar Abdul Karim v. The State, 1998 SCMR 908.

of bail amount. This Court's Orders dated 02.07.2024 and 08.07.2024 fixing the bail amount as Rupees One Crore requires neither interference nor review. Consequently, by this Common Order, the applications MA No.9004/2024 and MA No.9246/2024 are without merit and are hereby dismissed.

7. For removal of doubt, it is clarified that the observations made hereinabove are tentative in nature. The trial court is at liberty to independently adjudicate the case on its own merits without being influenced by the observations made hereinabove.

JUDGE

JUDGE