

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Kausar Sultana Hussain
Justice Jawad Akbar Sarwana

Cr. Bail Application No. D-1272 of 2024

Applicant/Accused: Mst Rubab Khan w/o Azam Baig
through Mr Amir Shah,
Advocate

Cr. Bail Application No. D-1195 of 2024

Applicant/Accused: Mr Tariq Memon s/o
Muhammad Hussain through Mr
Amjad Ali Shabrani, Advocate

State: Through Mr Abdul Hamid
Siddiqui, Assistant Attorney
General

Ms Ummara Qureshi, IO

Date of hearing: 15.07.2024

Date of Judgment: 26.07.2023

COMMON ORDER

Jawad A. Sarwana, J.: By this common order, we intend to dispose of the aforesaid Criminal Bail Applications (“Cr. BA”), i.e.:

- (A) Cr. BA No.D-1272/2024 filed by Mst Rubab Khan w/o Azam Baig (hereinafter referred to as “RK”); and
- (B) Cr. BA No.D-1195/2024 filed by Tariq Memon s/o Muhammad Hussain (hereinafter referred to as “TM”)

Both the aforesaid Cr. BAs arise out of FIR No.08/2024 dated 18.04.2024 filed by The State with the FIA, State Bank Circle, Karachi under Sections 409, 419, 420, 468, 471, 477-A and 109 PPC and impugns the two Orders dated 25.05.2024 passed by the

learned Presiding Officer of the Special Court (Offences in Banks) Sindh at Karachi (hereinafter referred to as “the trial court”) in Case No.18/2024, The State v. Shujat Ali Khan and Others, pertaining to RK and TM, who seek release from custody through the post-arrest bail applications after the learned trial court dismissed their first bail applications vide the two impugned Orders dated 25.05.2024.

2. The background of the case is that certain bank officials (all four of whom have been granted bail vide a separate bail granting order dated 25.05.2024 passed by the same trial court in the same Case No.18/2024), TM, RK and her husband, Azam Baig (absconding accused), and ten (10) others (nine out of the ten accused are absconding) have been charged under the above-referred sections of the PPC in crimes involving online gambling, through an Online Electronic App. namely “DIAMOND EXCEL.” Based on the FIR No.08/2024, the Interim Charge Sheet dated 04.05.2024 and the material placed by the Prosecution before the trial court, the proceeds of gambling activities totaled Rs.879,501,149. The trial court granted bail to the four bank officials on the grounds that the bank officials could not have reasonably foreseen the risk of adhering to the SOPs in opening the bank accounts of the co-accused customers, and they generated Suspicious Transaction Reports (STRs), which identified the mismatched transactions and co-accused customers. The trial court observed that the matter required further investigation and granted bail to the four (4) bank officials. But the same trial court in the same Case No.18/2024, for different reasons, denied bail to RK and TM.

A. Mst Rubab Khan w/o Azam Baig (“RK”)

3. According to the impugned Order dated 25.05.2024 pertaining to RK, the trial court denied bail to her on the following grounds, among others:

- (i) “. . .during course of inquiry. . .most of the illegal proceeds fell in the bank accounts of Azam Baig and Rubab Khan [RK] w/o Azam Baig [absconder] who were the ultimate beneficiaries and also purchased a property [from these funds]. . .”,
- (ii) “. . .a scheme involving gambling. . .is a significant criminal offence. . .”,
- (iii) “. . .the use of bank account to launder the proceeds from these illegal activities suggests a level of complexity and awareness cannot be overlooked. . .”,
- (iv) “. . .the pattern suggests that the accused played a crucial role in the financial operations of the gambling scheme. . .”,
- (v) “. . .the potential risk of the accused tampering with evidence or influencing witnesses is significant. . .”
- (vi) “the likelihood of the accused fleeing to avoid prosecution also weighs heavily against granting bail [as RKs husband, and her husband’s relative, Fahad, both co-accused are absconders]. . .”
- (vii) “the accused financial capabilities and connections demonstrated. . .heightened risk of flight, making it prudent to deny bail to ensure her presence during trial. . .”,
- (viii) “evidence against the accused, including documented abnormal transactions. . .provides a substantial basis for detaining her pre-trial. . .”
- (ix) “[granting bail] will embolden others. . .”, and “need to maintain public confidence. . .”, and,
- (x) “the proviso of Section 497 CrPC [of giving concession to a lady accused]. . .is not attracted to the cases of the Offences in Respect of Banks (Special Courts) Ordinance, 1984”.

The learned AAG has also relied on the above grounds, seeking orders to reject the bail applications filed by RK and TM.

4. RK has been charged with offences which are bailable. We have perused the impugned Order and have not found favour with

the several reasons for the position (conclusion) reached by the Presiding Officer to dismiss RK's bail application. First, according to the I.O., she has secured the bank statements of the applicant/accused and recorded statements of the witnesses.¹ As per the I.O., the allegations against RK revolve around the proceeds of online gambling generated through the banking system and the Internet. These materials are likely date-stamped electronically. Further, the preponderance of evidence is in electronic form, consisting of statements of accounts.² Finally, according to the I.O., she already has incriminating evidence against the applicant/accused, which is part of the crime property. In the above facts and circumstances, we cannot understand how RK, if released, could tamper with the evidence, influence witnesses, or otherwise obstruct the investigation and trial proceedings. In our view, this was not a valid ground for rejecting bail for RK.

5. The learned Presiding Officer also concluded that granting bail to the accused could undermine public confidence and serve as a deterrence of similar crimes in the future. When we asked the I.O. if the online gambling application had been shut down and blocked, she responded in the affirmative. This suggests that the general public can no longer access the said online gambling application, "DIAMOND EXCEL". Given this backdrop, we are not impressed with the conclusion reached by the learned Presiding Officer that RK could pose a danger to the community at large.

6. The evidence gathered by the I.O. is yet to be put to the scrutiny of trial. No record has been shown to us confirming that the case stands closed without giving an opportunity for a trial to RK. Further, at this point, RK (albeit in custody) has been participating in the inquiry. An interim charge has been

¹ Noman Khaliq v. The State and Another, 2023 SCMR 2122, 2125 (C)

² Zafar Nawaz v. The State and Another, 2023 SCMR 1977

submitted, and the trial will proceed after the final charge sheet is submitted to the trial court. The evidence in support of the prosecution case has yet to commence. The prosecution is expected to produce evidence of a conclusive nature to prove the ingredients of the crime alleged to have been committed by RK, her husband, Azam Baig and other co-accused acting in concert. No one should be condemned unheard. As such, the matter calls for further inquiry. Accordingly, a case is made out for the grant of a post-arrest bail in Cr. BA No.D-1272 of 2024 filed by Mst. Rubab Khan w/o Azam Baig. Consequently, Mst Rubab Khan is granted post-arrest bail and shall be released subject to RK furnishing a solvent surety and P.R. bond in the like amount to the satisfaction of the Nazir. The quantum of what this bail amount should be is discussed herein below in this Common Order.

7. The learned Presiding Officer has concluded in the Impugned Order that one of the reasons to deny bail to RK is that she is likely to abscond, particularly as her husband, Azam Baig and his relative, Fahad, both co-accused, are already absconding. While we tentatively agree with the apprehension raised by the learned trial court based on the material relied upon by the Prosecution and available on record; yet, we are not aligned with the trial court's conclusion to treat this as one of the grounds for rejection of bail. In the facts and circumstances of the case, RK and her family members (her husband and Fahad), who are co-accused, appear to be persons of means and have financial capabilities and connections demonstrated through the alleged laundering activities.³ Therefore, while on the one hand, there may be a heightened risk of flight if RK is granted bail, yet, on the other hand, the risk may be mitigated by setting the quantum of bail to such an amount that she is discouraged from

³ The Counsel for RK has also filed in the Cr. BA, RK's Income Tax Returns filed with the FBR and submitted copies of bank statements. He argued that she is a person of means and the debit and credit entries in the bank accounts are routine, normal and not at all unusual.

such flight and participates in the inquiry/investigation and the trial proceedings even if she is granted bail. Further, the bank accounts primarily used to facilitate the crime is/are that of RK and her family members. RK's Counsel has also filed RK's Taxpayer Profile dated 29.05.2024, indicating that she is the owner/sole proprietor of at least three (3) businesses: Blue Marketing, Wellbeing Health Care and Wellbeings Health Care. She has not disclosed the names of her husband's businesses or those which they may have been running jointly. This aspect remains the subject of further inquiry, too. The point is that RK does not appear to be a pauper and, given the alleged online gambling proceeds of Rs.879,501,149, presumably, the portion of which fell into her bank account and given that she is identified as the ultimate beneficiary of the proceeds of online gambling by the I.O., such a huge amount, cannot vanish overnight and most likely may well be still available to RK and her husband. Both have direct allegations against them in FIR No.08/2024.

8. In Nisar Ahmed Dina v. The State, 2005 SCMR 1875, the Supreme Court, dealing with a criminal case involving several persons accused of having misappropriated/embezzled millions of rupees, held that it is not necessary that only one accused if he has to be released on bail, must furnish the surety amount equal to the total misappropriated/embezzled amount. Accordingly, the apex Court proceeded to divide the liability proportionately, limiting the liability of each of the several accused to furnishing a surety bond up to a certain amount as determined by the Court in the facts and circumstances peculiar to that case. In the matter in hand, the alleged online gambling activities have generated proceeds of Rs.879,501,149 and involve four (4) bank officers, ten (10) customers and two (2) ultimate beneficiaries, i.e. RK and her husband, Azam Baig. Presently the I.O.'s interim Charge Sheet does not indicate the precise quantum of the illegal proceeds

from gambling which fell in the bank account(s) of RK and her husband, Azam Baig, except that the I.O. mentions that RK and her husband used RK's bank account, to purchase a 125 sq. yds. villa in Falak Residency, Opposite Malir Cantt., Karachi. The I.O. does not indicate the immovable property's market value or sale price. If one were to assume that both RK and her husband, Azam Baig, being the ultimate beneficiary of the gambling proceeds, were involved in generating online gambling proceeds of, say, even 1% of the total amount of the online gambling proceeds of Rs.879,501,149, then hypothetically the quantum of such proceeds that they, i.e. RK and her husband, may have generated from online gambling activities would come to Rs.8,795,010. RK and her husband, Azam Baig, being a married couple, may also have abet each other in generating online gambling proceeds through the "DIAMOND EXCEL" app. According to RK's Taxpayer Profile available with FBR as filed by RK's Counsel along with her application, RK is shown as the sole proprietor of atleast three businesses. Therefore, we are inclined to split the solvent surety amount for bail equally between husband and wife. Based on the tentative examination of the facts and circumstances of the case, **Rubab Khan w/o Azam Baig is granted post-arrest bail and shall be released subject to her furnishing solvent surety in the sum of Rupees Forty Lacs (Rs.40,00,000)⁴ and P.R. bond in the like amount to the satisfaction of the Nazir of this Court.** The quantum of the solvent surety amount of Rupees Forty Lacs or Rupees Four Million (Rs.4,000,000) comes to about 0.5% of the total proceeds of Rs.879,501,149 allegedly gambled online. The I.O. identifies RK as one of the ultimate beneficiaries of the gambling proceeds of Rs.879,501,149. As such, the solvent surety of Rs.4,000,000 is on

⁴ Rupees Four Lacs (Rs.4,000,000) is the rounded amount of half of Rs.8,795,010. The sum of Rs.8,795,010 itself is 1% of the total online gambling proceeds of Rs.879,501,149. 50% of Rs.8,795,010 = Rs.4,397,505 is rounded off to Rs.4,000,000.

the low side of the total proceeds allegedly gambled online. The bail amount of Rupees Forty Lacs is reasonable, far less than the amount mentioned in the Interim Charge Sheet, and in the context of the total proceeds gambled online, mitigates the risk of RK, a person of means who is arrested and currently not absconding (unlike her husband and his other family members who are accused and absconding at present) to attend the on-going inquiry and investigation as well as participate in the trial proceedings after this Court grants her bail. Hence, the bail amount of Rupees Forty Lacs neither constitutes punishment nor is it excessive nor beyond the means of RK. The huge amount of proceeds of Rs.879,501,149 gambled online cannot simply disappear into thin air after the crime has been committed and may most likely be invested in property or retained in the form of some liquid asset or available with the absconding co-accused, including inter alia, RK and her absconding husband or others, etc. possibly kept in a safety deposit locker or some other place outside the banking channel. In the circumstances, the bail amount of Rupees Forty Lacs cannot be considered beyond the financial capacity of RK, who is identified by the I.O. as one of the two ultimate beneficiaries of online gambling proceeds of Rs.879,501,149.

B. Tariq Memon s/o Muhammad Hussain ("TM")

9. The learned Presiding Officer in the impugned Order dated 25.05.2024 pertaining to TM appears to have rejected TM's application for bail on similar grounds as those stated in the impugned Order of even date pertaining to RK. For sake of brevity, these grounds are listed in paragraph 3 of this Common Order and may be read into this paragraph. Suffice it to say that while RK is identified as the ultimate beneficiary of the proceeds of online gambling of Rs.879,501,149, TM's role in the alleged crime is different from that of RK. According to the I.O.s Interim Charge Sheet dated 04.05.2024, TM appears to be a customer of the banks, and the bank accounts he owned, including his sole

proprietorship account, appear to have been used in the online gambling proceeds. In an unreported Judgment of the Supreme Court in Criminal Petition No.155/2024 dated 21.03.2024 (Syed Sakhawat Hussain v. The State and Another), the apex Court dealing with a bank scam involving account holders and branchless agents of the bank held that mere receipt of funds in a bank account cannot be construed as proof of involvement in the scam at the preliminary stage as there is insufficient and incomplete material available on record to establish any connection of the petitioner. The facts of the above-mentioned unreported case of the Supreme Court are different from the case in hand. In the present case, the total number of account holders is much smaller than the large number of account holders involved in the judgment of the Supreme Court. Further, TM, the account holder, has a direct allegation against him in FIR No.08/2024 and is implicated in the crime as per the Statements obtained and referenced by the IO in the Interim Charge Sheet. This kind of detail was apparently missing in the persons accused in the Supreme Court Judgment. The credit and debit entries in TM's bank account, including funds transfers, are mentioned by the I.O. in the present case.

10. Additionally, neither the crime is of a nature which may involve the evidence being tampered with, nor is there any likelihood of the offence being repeated by TM. The likelihood of TM absconding is also remote. Hence, the case also requires further inquiry as contemplated under Section 497(2) Cr.P.C., and TM is entitled to the concession of bail. Even otherwise, the applicant/accused is to be afforded the right of the benefit of the doubt can even be extended at the bail stage.⁵

11. In view of the facts and circumstances of the case in hand, the background of which has been discussed in paragraphs 2 and 9 of this Common Order and the principle discussed in the

Judgments of the Supreme Court (supra), a case is made out for the grant of a post-arrest bail in Cr. BA No.D-1195 of 2024 filed by Tariq Memon s/o Muhammad Hussain. Consequently, Tariq Memon is granted post-arrest bail and shall be released subject to TM furnishing a solvent surety and P.R. bond in the like amount to the satisfaction of the Nazir. The quantum of what this bail amount should be is discussed herein below in this Common Order.

12. According to the I.O.'s Interim Charge Sheet dated 04.05.2024, the proceeds of the online gambling were received by TM in his two bank accounts. The total credit entries of TM's bank accounts appearing in Row 2 of the I.O's Interim Charge Sheet list two tallied sums of Rs.118,213,474 and 32,241,812, which total Rs.150,455,286. Therefore, a plain reading of the I.O.s Interim Charge Sheet suggests that TM was allegedly the beneficiary of proceeds of Rs.150,455,266 gambled online. If one were to apply the same criterion as the one applied by us in this Common Order in the case of RK to TM's case, i.e. assume that TM was involved in generating online gambling proceeds of, say, even 1% of the total amount of the online gambling proceeds of Rs.150,455,286, then hypothetically the quantum of such proceeds that TM may have generated from online gambling activities would come to Rs.1,504,552. Therefore, placing reliance on the Nisar Ahmed Dina and Syed Sakhawat Hussain cases (supra) of the Supreme Court of Pakistan discussed in paragraphs 8 and 9 of this Common Order, and based on the tentative examination of the facts and circumstances of the case, **Tariq Memon s/o Muhammad Hussain is granted post-arrest bail and shall be released subject to him furnishing solvent surety in the sum of Rupees Fifteen Lacs (Rs.1,500,000)⁶ and P.R. bond in the like amount to the satisfaction of the Nazir of this Court.** The quantum of

⁵ Ihtisham Ali Cheema v. The State, 2022 SCMR 624

⁶ Rupees 15 Lacs (Rs.1,500,000) is the rounded amount of 1% of Rs.150,455,286.

the solvent surety amount of Rs.15 Lacs (Rs.1,500,000) comes to about 0.9% of the total proceeds of Rs.150,455,286 allegedly gambled online by TM as set out in I.O.'s Interim Charge Sheet dated 04.05.2024.

13. Both RK and TM are directed to cooperate fully with the I.O. of the case. If the I.O. makes a complaint of non-cooperation by the applicants/accused, then the learned trial court will be empowered to cancel the concession of bail granted herein by itself with no further reference to this Court. Even otherwise, if applicants/accused misuse the concession of bail during trial, then the trial Court will be competent to cancel their bail without making any reference to this Court.

14. Suffice it to say that the observations made hereinabove are tentative and only for this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court decision of the case on merits.

15. The two bail applications stand allowed in the above terms.

JUDGE

JUDGE