

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application No.D-42 of 2023

Date	Order with signature of Judge
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For hearing of bail application

Present:-

Mrs. Justice Rashida Asad, J.

Mr. Justice Khadim Hussain Soomro, J.

Mr. Achar Khan Gabole, advocate for applicant/accused.

Mr. Muhammad Rehan Khan Durrani, Advocate for Al-Fallah Bank Sukkur.

Mr. Ali Hyder 'Ada' Deputy Attorney General.

Mr. Munir Ahmed Siyal, Assistant Director (Legal) FIR Sukkur alongwith SI Nadir Ali Simair Sub-Inspector Investigating Officer, FIA Sukkur.

ORDER

05-10-2023

Date of hearing 03-10-2023.

Date of Order. 05-10-2023.

KHADIM HUSSAIN SOOMRO, J. The instant application has been filed on behalf of applicant/accused Saleemullah for his release on bail u/s 497 Cr.P.C in Crime No. 04/2023 for offence u/s 409, 420, 468 PPC R/W Section 5(2) Prevention of Corruption Act, 1947 (Act No. II of 1947), registered at Police Station, FIA Crime & AHT Circle,

Sukkur. Prior to this, such application was moved before the trial Court, but the same was rejected by the learned Presiding Officer, Special Courts (Offences in Banks) Sindh at Karachi, vide order dated 18-05-2023; hence, this bail application.

2. Precisely, the facts of the prosecution case are that the instant case is an outcome of the enquiry No.15/2021 of FIA Crime Circle, Sukkur, after getting the necessary permission from the higher Authorities. The instant case was registered against the applicant having CNIC No.45103-4923321-9 R/O village Ali Mahar District Ghotki on the joint written complaint submitted by 1. Sooraj Kumar son of Jai Kumar, Branch Manager, the Bank Al-Fallah Ltd. At Ghotki Branch, having CNIC No. 45102-69214988-7 and 2. Sanaullah Dayo son of Bashir Ahmed, Team leader, SME Bank Al-Fallah Ltd. Ghotki Branch having CNIC No. 45102-1913178-5 regarding embezzlement/fraud/misappropriation of Funds & breach of trust. Hence, the applicant/accused was found guilty of defrauding the customers of Bank Al-Fallah to the tune of Rs.769,5864/- by way of cheating and forgery and getting the wrongful gain in the capacity of RM SME, complainant after obtaining prior permission from the competent authority lodged the FIR.

3. The applicant/accused on having been refused post-arrest bail by the learned Presiding Officer, Special Courts (Offences in Banks)

Sindh at Karachi, vide order dated 18-05-2023, has sought the same from this Court by filing the present bail application.

4. Mr. Achar Khan Gabole, learned counsel for the applicant/accused contended that the applicant/accused being innocent has been involved in this case falsely by the FIA police; he further argued that there is unexplained delay of three years in registration of the FIR; he added that an internal inquiry was conducted by the FID (Fraud Investigation Department)/AIG (Audit Investigation Group) of the Bank Al-Fallah in which the applicant had participated but the said department did not find any misappropriation, fraud or the embezzlement of funds in the Bank and no role was assigned to the applicant/accused, but FIA has nominated him without paramount considerations; however, according to his job description, he had no authority to receive the cheques, and he was merely a Relationship Manager in Small & Medium Enterprises to catch/make new clients, make loan proposals and monitoring of pledge stock; he further argued that applicant neither had authority to sanction any loan fund to the client nor was authorized to sign any of the document without prior permission of the Branch Operation Manager. Per counsel, no complaint has been made by the bank account holders that their cheques have been stolen by the present applicant; but according to enquiry, the applicant used customer cheques i.e. M/s Marvi Flour Mill and M/s

Galaxy BBQ & Grill, and transferred funds in the account of Ayaz Ali but they, both account holders, denied for their appearance in the inquiry being busy in their businesses and informed through telephonic talk that their matter had been settled down by the accused and amount had been paid to them. Counsel for the applicant/accused further submitted that neither any ATM Card was recovered from the applicant nor any evidence surfaced that he had used the ATM Card of Ayaz Ali; however, said Ayaz Ali is not cited in the era of the list of prosecution witnesses, hence there is no evidence available on record that amount has been credited in the personal account of the applicant. Learned counsel concluded that interim challan has been submitted before the Court concerned and the applicant/accused is in custody and no useful purpose would be served if the applicant/accused is kept under incarceration for an indefinite period; that the case against the applicant/accused is one of further inquiry, therefore, he is entitled to grant of bail. In support of his contentions, he placed reliance upon the cases of *Muhammad Siddique and another v. Province of Punjab and other (2020 P Cr. L J 197)* and *Gulshan Solangi and others v. The State through P.G Sindh (2020 SCMR 249)*.

5. Mr. Dareshani Ali Hyder 'Ada' learned Deputy Attorney General, assisted by Mr. Rashid Khan Durrani, Advocate for Bank as well as Mr. Munir Ahmed Siyal, Assistant Director Legal, FIA Circle

Sukkur, vehemently opposed for grant of bail to the applicant/accused by contending that applicant/accused has committed Criminal breach of trust, and he himself received the cheques from the owners of Mills and issued such receipts to them. The documentary proof vis-à-vis the Bank statement of the accused available with the prosecution shows that alleged cheques were deposited in the account of Ayaz Ali, opened and operated by the applicant, and the amount was subsequently withdrawn by him. The cheques are in the possession of the Investigating Officer. As such, the applicant/accused has actively participated in the commission of the offence, In support of his contentions, he has relied upon the case of *Allah Rakha v. The State through P. G Punjab and another (2020 SCMR 1063)*.

6. I have heard the learned counsel for the parties and have perused the record meticulously with their able assistance.

7. The allegations against the applicant/accused are that he has misappropriated an amount of Rs.7,695,884/-. The applicant was R.M (Relationship Manager) in Small & Medium Enterprises to catch new clients for opening bank accounts, make loan proposals and monitor pledge stock; and he used to collect the cheques from customers and also get the same encashed, and he transferred the amount in the account of one Ayaz Ali who was close friend of the applicant/accused. The applicant was also found guilty of

manipulation of another amount of Rs.1800,000/- which he had settled with the aggrieved party later on.

8. During the course of arguments, the learned counsel for the Bank produced receipts which prima facie show that the amount of loan was collected from the parties, and instead of making a deposit to the same effect, the amount was transferred into the account of one Ayaz Ali who is an absconder. During the course of the investigation, the Investigation Officer recorded the statements of Mills proprietors and other prosecution witnesses, who have implicated the present applicant/accused. There is no ill will on the part of the customers to implicate the present applicant/accused in the commission of offence, which prima facie shows that he is a real culprit. After an inquiry, the applicant/accused was dismissed from service; however, he preferred a departmental appeal, which also fated dismissal. No doubt, in the cases cited by the learned counsel for the applicant, bail was granted, but in each one of them, the facts and circumstances were distinguishable from the instant matter and does not attract.

9. In view of the above, we have come to the conclusion that *prima facie*, there appears to be sufficient material against the applicant to connect him with the alleged offence of misappropriation; therefore, the applicant does not deserve the concession of bail. Resultantly, the instant bail application merits no consideration, and the same is *dismissed*.

10. These are the reasons of our short order dated 03-10-2023.

11. Needless to mention that the observations made hereinabove are tentative in nature and shall not cause prejudice to the right of either party at trial.

JUDGE

JUDGE

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