

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Applicant : Muhammad Amin.
(Spl. Cr. Bail Application No.13/2016).

Applicant : Hameedullah.
(Spl. Cr. Bail Application No.14/2016).

Versus

Respondent : The State,

APPEARANCE

Mr. Muhammad Nauman Jamali advocate for applicant in B.A. No.13/2016.

Mr. Salahuddin Gandapur alongwith M/s. Pir Darwaish Khan and Sabir Shah, advocates for applicant in B.A. No.14/2016.

Syed Mohsin Imam Rizvi advocate for Custom Authority.

Mr. Arshad Lodhi advocate present in Court, appearing for co-accused Sajid Hussain.

Date of hearing : 22nd and 29th February 2016.

Date of order : 10.03.2016.

ORDER

Through instant bail applications, applicants seek post-arrest bail in Crime No.1/2014, under section 3, 6, 7, 8, 21, 22, 23, 26 & 73 punishable under section 33(3)(5)(8)(11c)(13)(16)(18) of Sales Tax Act, 1990.

2. Precisely, relevant facts of the prosecution are that applicants and others with connivance of main accused Sajid Hussain, committed offence of tax fraud by submitting fake sales tax invoices and filing of sales tax returns under the garb of tax

consultancy. It is further reflected that accused Sajid Husain was running office of tax consultants at the time of raid at his office when the prosecution recovered computer data of fake invoices, sales tax returns of various firms, ID, passwords and pin codes of other registered persons including fake unit check books and other manual record.

3. Learned counsel for applicants *inter alia* have contended that co-accused Sajid Hussain has been granted bail by the trial Court; no iota of evidence is available against the applicants with regard to tax fraud, other co accused on similar ground have been granted bail by the trial Court on payment of the amount claimed by the prosecution; applicants are innocent, claim of prosecution is yet to be determined by the prosecution hence applicants are entitled for bail. Learned counsel for applicant in Bail Application No.13/2016 has relied upon 2012 PTD 1361, 2011 PTD 2714, 2006 PTD 2190, 2010 YLR 804, 2014 PTD 1733, PLD 1995 SC 34, 2012 SCMR 1235, 1996 SCMR 1132, 1969 SCMR 233, 1982 SCMR 970, 1969 SCMR 289 and 1999 P Cr LJ 1237.

4. In contra, learned Special Prosecutor admitted that accused Sajid Hussain has been granted bail by the trial Court, such order being perverse is assailed by them before this Court, and applicants are not entitled for bail. In support of his contentions he has relied upon PLD 1997 SC 545.

5. I have heard the respective sides and have also perused the available material carefully.

6. As per allegation, the prosecution claimed to have detected a big scam of tax-fraud in the name of *tax-consultancy*. Worth to add here that distinction between an offence, *affecting an individual* and the one (*offence*) directed against the society as a whole. The **white collar** crimes do fall within second category where discretion of bail *normally* be not exercised in favour of the accused. However, mere falling of an offence with second category alone shall not *necessary* disentitle one from concession of bail if he succeeds in bringing his case within meaning of Section 497(ii) Cr.PC because in that case bail becomes *right* and is no more *discretion*. Reference is made to the case of Nisar Ahmed v. State &Ors(2014 SCMR 27) wherein such view was affirmed while referring to known case of Muhammad Ismail v. Muhammad Rafique(PLD 1989 SC 585) that:

'The question then arises; whether, subsection (2) of section 497 Cr.PC would have operation notwithstanding the afore-stated practice of this Court. Much discussion is not necessary in this behalf. When an accused person becomes entitled as of right to bail under subsection (2) of section 497, Cr.PC the same cannot be withheld on the ground of practice; because, the latter is relatable to exercise of discretion while the former is relatable to the exercise and grant of right.'

The present applicants / accused have not been alleged to be **main culprits** (accused) but have been alleged to be involved (in association) in such scam with **main culprit** (accused) which *allegation* requires determination through proper and legal course of *trial*. The allegations or a part thereof if *prima facie* appears to be requiring further evidence to stand will make the case one of further inquiry within meaning of Section 497(ii) Cr.P.C. Further, it is not disputed that the case of the present applicants *squarely* falls on same footing as that of co-accused who have been admitted to bail by

the trial Court. In such eventuality, the prosecution does not appear to be justified while resisting the release of the applicants / accused subject to payment of *default amount* as done by other co-accused, released on bail. The provision, *relating to bail*, and penal provision of Sales Tax Act do not recognize a mode to earn a right of bail for an accused of offences under Sales Tax *only* by making payment of default amount, *which too*, subject to final determination of the charge but criterion, *not hesitated in saying*, shall remain same as coming out of such *governing provisions* and those sketched by Honourable Apex Court. If such practice is allowed to continue it shall make the real beneficiaries **(culprits)** to earn such right by engaging some of their *illegally* earned money while an innocent shall have to remain in jail till his declaration at the end of the day (*judgment*) which shall seriously prejudice the object and scheme of provisions, aimed for release of *accused* pending determination of their guilt. Thus, *without any hesitation*, would conclude that this practice cannot be within lines of **Criminal Administration of Justice**, therefore, prosecution *legally* cannot resist a plea of bail *merely* on this ground.

7. Further, the prosecution does not claim to have sufficient material against the applicants/accused to *prima facie* show existence of reasonable grounds to believe that applicants/accused are linked with the offence(s) with which they are charged. This also advances the case of the applicants/accused for concession of bail. Besides applicant Muhammad Amin has taken plea of ailment and infirm person. Accordingly, report was called from the concerned Jail Medical Officer, such report states “*Old aged known hypertensive,*

*bronchial asthma, lipoma and neurological disorders. Besides the release of other co-accused with identical allegations, is sufficient to bring the principle of **rule of consistency** into play for exercise of discretion in favour of the present applicants / accused. It is added that the release of the applicants / accused shall not prejudice the penal consequences, including penalty (much more than default amount) as per Act, if they are found guilty at the end of the day.*

8. In view of what has been discussed above, I am of the view that the applicants/accused have succeeded in making out a case for grant of bail. Accordingly, the applicants are *hereby* directed to be released on bail subject to their furnishing solvent surety in the sum of five hundred thousand rupees each only and PR bond in the like amount to satisfaction of trial Court.

Imran/PA

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