

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1469 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Mohammad Asif son of Zahoor Ahmed	: through Mr. Karam Chand Kingrani, Advocate
The State	: through Ms. Rubina Qadir, Deputy Prosecutor General, Sindh a/w ASI Shahid Nazir of P.S Preedy, Karachi
Date of Hearing	: 03.10.2024
Date of Order	: 03.10.2024

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Mohammad Asif seeks his release on post arrest bail in Crime No.286 of 2024 registered with P.S Preedy, Karachi for the offence punishable to Section 489-F PPC. The applicant was arrested by the police on 15.05.2024 and after completion of investigation, case against him has been challaned which was pending for trial before the Court of Civil Judge & Judicial Magistrate-XXV, Karachi-South ("trial Court"). The applicant filed Criminal Bail Application No.77 of 2024, which after hearing the parties, was declined by the trial Court in terms of its order dated 25.05.2024. Later, the applicant filed Criminal Bail Application No.1829 of 2024 before the Court of Sessions which subsequently was assigned to Addl. Sessions Judge-III, Karachi (South), who, after hearing the parties, has also declined the request so made. Hence, instant application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file(s), therefore, there is no need to reproduce the same.

3. Process issued against complainant has been returned duly served, taken on record; however, no one is in attendance on his behalf. The trial Court has also returned process unserved with following observation;_

“b. That on 13-09-2024 Bailiff Namely Shajeel went to the given address of complainant as mentioned in your’s honor notice where one namely Zainulabdeen informed him that the actual office of the complainant is 421. The bailiff of this Court went to the office No.421 where he was informed by the Branch Manager of said office that this is a regional office and the complainant is available in the Head office situated in Lahore. The bailiff of this Court informed the said Branch Manager about your honor’s notice, however, the Branch Manager available at the Officer No-421 denied to receive such notice and stated that he cannot receive the instant notice of Mali Zain ul Aabideen Son of Malik Safdar Ali, hence, the same is hereby returned unserved.”

4. Learned counsel for the applicant submits that the cheque in question was allegedly issued on 16.02.2024; however, the FIR was registered on 03.05.2024 i.e. with a delay of about more than two months and no plausible explanation has been furnished by the prosecution for such an inordinate delay. He further submits that the case has now been made over to the Court of Civil Judge & Judicial Magistrate-III, Karachi (South) where complainant party has been avoiding to appear; consequently, trial has not commenced and the applicant is languishing in jail without progress in his trial. In support of his contention, learned counsel places reliance upon the cases of *TARIQ BASHIR and 5 others Versus THE STATE (PLD 1995 Supreme Court 34)*, *RIAZ JAFAR NATIQ Versus MUHAMMAD NADEEM DAR and others (2011 SCMR 1708)* and *RIAZ AHMED Versus The STATE (2024 YLR 1144)*.

5. On the other hand, learned Deputy P.G, Sindh appearing for the State, opposes the bail application on the ground that huge amount is involved in this case, therefore, applicant is not entitled for the bail.

6. **Heard arguments, record perused.** Admittedly, the applicant is nominated in the FIR and the case has been challaned; however, inspite of framing of the charge against him, prosecution has failed to procure its witnesses, therefore, accused is languishing in jail without progress in his trial. As far as, arguments advanced by learned Deputy P.G, Sindh that amount involved in this case is huge one, is concerned, entire episode of

prosecution rests upon documents which are still in custody of the prosecution itself. It is settled law that one cannot be kept behind the bars for indefinite period without progress in his trial.

7. In the circumstances and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE (PLD 2017 SC 733)*, case against applicant requires further inquiry within meaning of subsection (2) to section 497 Cr.P.C. Consequently, instant Criminal Bail Application is hereby allowed. Applicant **Mohammad Asif son of Zahoor Ahmed** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.500,000/- (Rupees Five Hundred Thousands Only) and P.R Bond to the satisfaction of learned trial Court.

8. Needless to observe that the observations made hereinabove are tentative in nature and the learned trial Court shall not be prejudiced by any such observations and shall decide the case on merits in view of the evidence available on record.

JUDGE

Zulfiqar/P.A