

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application 130 of 2024

Muhammad Faisal

vs.

The State

For the Applicant / Accused : Messrs. Raj Ali Wahid
and Kashif Khan Advocates

For the Prosecution / State : Ms. Alizeh Bashir
Assistant Attorney General

: Mr. Ghulam Asghar Pathan,
Advocate.

Date of hearing : 21.11.2024

Date of announcement : 21.11.2024

ORDER

Agha Faisal, J. The applicant seeks post-arrest bail, in respect of F.I.R. No.01/2023 registered on 20.06.2023, before Corporate Tax Office, Zone-IV, Karachi, pertaining to offence/s under Section/s 2(9), 2(37), 3,6,7,8,11,22,23,26 and 73 of the STA, 1990, punishable under section 33(11), 33(13) of the Act *ibid*.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the Special Judge (Customs, Taxation and Anti-Smuggling-I), Karachi in Case No. 140 of 2023, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

- a. The allegation against the applicant is that his CNIC is / was being used to open and maintain an account in which funds, alleged to be proceeds of illegal sales tax refunds, have been accreted.
- b. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that applicant is victim of identity theft; his CNIC has been wrongly used and the applicant / accused has no nexus with the account/s or any proceeds therein. It is sought to be demonstrated that when the applicant had been arrested and amount of Rs.50 Million was put in such account; which cannot be attributed on any count to the applicant.

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

It was concluded that in any event the offence/s are not prohibitory in nature.

The Learned counsel for Commissioner Inland Revenue opposed grant of bail on the ground of applicant has also been accused in another FIR. It was argued that the amount alleged to have been misappropriated is huge and also that if enlarged on bail applicant is likely to perpetuate the offences again.

- c. *Admittedly*, the investigation to the extent of the applicant accused is complete and he is not required by the prosecution for such purpose. His nexus with the relevant account / proceeds, if any, remains to be elaborated. The assertion of identity theft / misuse of CNIC has also to be addressed.
- d. The alleged offence admittedly does not fall within the prohibitory clause and it is settled law in such matters the grant of bail is the rule³ and its refusal an exception⁴. The Supreme Court has illumined⁵ that in such cases Courts may consider favorably the granting of bail and decline to do so only in exceptional cases. No exception in such regard has been articulated by the prosecution in the present matter.
- e. Upon tentative⁶ assessment of the material⁷ collected by the prosecution, for and against the applicant, it is manifest that the case, pertaining to the involvement of the applicant / accused in commission of the alleged offence/s, merits further enquiry⁸, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception⁹.
- f. In addition to the foregoing, the material placed before the Court does not indicate any criminal record of the applicant, in cases of an identical nature or otherwise; no argument has been articulated requiring the applicant's presence for further investigation at this stage¹⁰ or denoting him as a flight risk; no apprehension has been expressed with regard to tampering of evidence by the applicant or repeating the offence/s, if enlarged on bail¹¹; hence, no cause is apparent presently warranting the continued incarceration of the applicant *pendente lite*.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicant is hereby admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and a personal recognizance bond, in the like amount, to the satisfaction of the learned trial Court.

³ *Muhammad Tanveer vs. The State & Another* reported as PLD 2017 SC 733.

⁴ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

⁵ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

⁶ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁷ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

⁸ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

⁹ *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

¹⁰ *Riaz Jafar Natiq vs. Muhammad Nadeem Dar & Others* reported as 2011 SCMR 1708.

¹¹ *Subhan Khan vs. The State* reported as 2002 SCMR 1797.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE