

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Bail Application No.2426 of 2024  
*(Muhammad Aquib Akbar Vs The State)*

Date	Order with signature of Judge
	Before:- Mr. Justice Salahuddin Panhwar Mr. Justice Adnan-ul-Karim Memon

For hearing of bail application

**Date of hearing and Order:-21.11.2024**

Mr. Raja Jawad Ali Saahar advocate for the applicant  
Mr. Mukhtar Ahmed Kobhar advocate for the complainant.  
Mr. Pir Riaz Muhammad Shah, DAG

**ORDER**

**Adnan-ul-Karim Memon, J.** – The applicant Muhammad Aquib Akbar has approached this Court for the grant of post-arrest bail in FIR No. 60 of 2024 registered for offenses under Section 409, 420, 468,471,477-A, 109, 34 PPC of PS FIA Crime Circle Hyderabad.

2. The trial court declined his earlier bail plea vide order dated 11.10.2024 on the premise that he is accused of the banking fraud scheme in connivance with his accomplices. Besides the trial court cited the ongoing investigation process, the applicant's role in facilitating the fraud, and the potential harm to public trust in the banking system as reasons for the denial of the post-arrest bail to the applicant.

3. Facts of the case are that complainant Darya Khan reported a fraudulent withdrawal of Rs. 1 million from his HBL account on September 13, 2023. The bank filed an FIR with the FIA on September 20, 2024, through operation Manager HBL City-II Hyderabad. During the investigation, it was revealed that co-accused Zeeshan, a State Life Insurance employee, and the bank officials, collaborated to update Darya Khan's account details and activate mobile banking. The stolen funds were transferred to the co-accused Muhammad Raheel's account.

4. At this juncture, it is urged by the learned counsel for the applicant that the applicant was not the direct beneficiary of the fraud. However, his collusion has been shown with malafide intentions. The learned counsel for the applicant emphasized that the charges against the applicant were/are false and unsubstantiated from the record. As per counsel, the applicant is a

law-abiding citizen with a clean record; the original complaint lodged by the complainant in 2023 does not name the applicant as an accused, and the complaint was filed with a significant delay; the FIR is also delayed for more than one year from the date of alleged occurrence on 13.09.2023, which requires further inquiry. He further added that the applicant was not involved in the fraudulent transactions as portrayed and was not authorized to process them under the Banking law; that no evidence connects the applicant to the alleged crime; that the complainant's allegations are based on hearsay and lack specificity; that the internal inquiry failed to find any wrongdoing on the applicant's part, however the area Operations Manager HBL City-II Hyderabad lodged FIR on 20.09.2024 with the false narration that applicant played a role to commit the offense which is apathy on his part as he could not find anything against the applicant in the intervening period and all of a sudden in September 2024 when he received the application to save his skill named the applicant in the subject FIR at the behest of FIA. He further argued that the applicant's detention serves no purpose and is excessive in the absence of evidence. He emphasizes that the law favors the accused in bail matters, and the applicant may be released on bail based on further inquiry, though the FIA has not yet submitted a final report despite a lapse of more than one year. Learned counsel emphasized that as per the FIA report, co-accused, Zeeshan, activated mobile banking and transferred the funds in the account of co-accused Raheel. As such the applicant has no connection to the complainant's branch and resigned before the alleged crime. As per the learned counsel, the applicant has a clean record and recently secured a government job. He poses no flight risk and would not tamper with evidence if released on bail as the case depends upon documentary evidence, which is available with the prosecution. He further added that the prosecution relies on circumstantial evidence, in such a scenario the applicant deserves the benefit of the doubt at the bail stage. The applicant requests bail to him to avoid jeopardizing his career and urges a fair investigation. He prayed for allowing the bail application.

5. While opposing the above-mentioned contentions, the learned Deputy Attorney General assisted by learned counsel for the complainant argued that the investigation is ongoing and has

not yet been completed as such the applicant cannot be released on post-arrest bail during the investigation. As per learned counsel for the complainant, the applicant has been implicated by bank officials, who have documentary evidence against the applicant to connect him to the subject crime. He added that co-accused Muhammad Raheel, the beneficiary of the stolen funds, has not provided a clear explanation for the money, and granting bail to the applicant at this stage could jeopardize the investigation process, undermine public trust in the banking system, and potentially encourage future impostors. Therefore, this bail application is liable to be dismissed.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. The accusation against the applicant is that he was entrusted with sensitive customer information and played a crucial role in maintaining the integrity of banking operations and violated this trust, by providing information to the co-accused to commit the crime. However, the defense theory is that the applicant was not named in the initial complaint, the FIR was filed after more than one year, and the applicant was not called in the investigation to rebut the allegations. The defense also claims that no specific role had been assigned to the applicant either by the complainant or bank official however he has been saddled with the criminal liability by FIA; and, that he was not employed at the concerned branch where the victim's account was maintained.

8. The tentative assessment of the record reflects that the alleged offense occurred on 13.09.2023 and reported on 20.09.2024 after more than one year without explanation; that the case was registered on 04.07.2024, pursuant to inquiry No. 95/2024 lodged by Aijaz Hussian Area Manager HBL City-II Hyderabad; that complainant Darya Khan visited the bank on 01.03.2024 and alleged that funds of Rs.100,000/- had been fraudulently and unauthorizedly been debited from his account in February 2024 through his unsolicited HBL mobile application channel which means that alleged offense occurred in February 2024, whereas the date and hour of occurrence of offense has been shown on 13.09.2023, which factum requires further inquiry; that the

applicant's name is not mentioned in the original complaint lodged by Operation Manager on 04.07.2024, however name of co-accused Zeeshan has been shown to be the main accused; that prima facie there's no direct evidence linking the applicant to the crime, and the prosecution's case relies on circumstantial evidence and during the course of inquiry it was transpired that the co-accused in collusion with the applicant prepared a forged Additional Request Form (ARF), if this is the position as to who stopped the complainant and the Operation Manager HBL Bank to come to unearth the scam. if any, in time and waited for long time to lodge complaint in the year 2024 whereas the complainant Darya Khan stated that he visited the bank on 01.03.2024 and found that his one million was debited from his account in February 2024; that such delay requires further inquiry into the guilt of the applicant.

9. Perusal of the F.I.R. reflects that there is a delay in lodging the F.I.R, as the complainant remained silent for the aforesaid period and did not report the matter to the police in time, therefore, it is always considered to be fatal for the prosecution case in bail matters. In such circumstances, keeping the applicant behind bars for an indefinite period is not justified as no recovery has been shown from the applicant.

10. In the facts of the present case as discussed supra, such an assessment can be made at the trial to evaluate whether any improper benefit, if at all, has been derived by the applicant on account of the alleged debiting of the amount from the account of the complainant. However, this aspect of the matter cannot be determined at the bail stage in the present case, however, the trial court would be in a better position to thrash out the aforesaid analogy under law for the reason that invoking the Provisions of PPC is not intended to be used for recovery of an alleged amount through bail proceedings as it is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under the PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing, its absence in the

conduct of an accused to a degree that constitutes dishonesty by him within the meaning of the aforesaid sections of P.P.C.

11. The only question involved in the present bail matter is whether the bail can be refused in sections 420 and 471 PPC., which are bailable offenses, whereas Section 468 is punishable by up to seven years. In such circumstances, when the offenses do not fall within the prohibition contained in Section 497(1) Cr. P.C and punishment of the offense are less than 10 years, the Supreme Court in the case of *Iftikhar Ahmed v The State* **PLD 2021 SC 799** has given loud and clear directions to all courts in the country that granting bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule, and refusal shall be an exception.

12. So far as the criminal breach of trust is concerned, the concept of trust envisages that one person (the settlor) while relying upon another person (the trustee) and reposing special confidence in him commits property to him. There is a fiduciary relationship between the two in law. The essential ingredients of criminal breach of trust under section 405 PPC are: (i) the accused must be entrusted with property or dominion over it; (ii) he must have dishonestly misappropriated the property or converted it to his use or dispose of it in violation of any trust or willfully suffers any other person to do so. The offense of criminal breach of trust resembles the offense of embezzlement under the law. The punishment for ordinary cases is provided in section 406 PPC but there are aggravated forms of the offense also which are dealt with under Sections 407 to 409 PPC. The first condition mentions three important terms: entrustment, dominion, and property. "Entrustment" means handing over possession of something for some purpose without conferring the right of ownership while "dominion" refers to "the right of control or possession over something, such as dominion over the truck". The term "property" has been used without any qualification so it must be understood in the wider sense. There is no reason to restrict its meaning to movable property. Further, the word "property" must be read in conjunction with "entrustment" and "dominion". A trust contemplated by section 405 PPC would arise only when the

property belongs to someone other than the accused. The law recognizes a distinction between the investment of money and the entrustment thereof. In the former, the sum paid or invested is to be utilized for a particular purpose while in the latter case, it is to be retained and preserved for return to the giver and is not meant to be utilized for any other purpose. Primarily, breach of trust when associated with dishonesty triggers criminal liability. Thus, even temporary misappropriation may attract Section 405 PPC. On the other hand, negligence which results in loss of the entrusted property may make a person liable for damages under the civil law but would not expose him to criminal prosecution. Criminal prosecution is possible only if it is shown that the person was entrusted dominion over a particular asset.

13. Hence, because of what has been discussed above, in our tentative opinion, the trial Court has to see whether Sections 409 and 477-A PPC are attractive or otherwise and the application of the same would be resolved by the Trial Court after recording the evidence.

14. The question is whether bail can be granted during investigation, primarily, post-arrest bail can be granted during an investigation if there are no reasonable grounds to believe the accused committed the crime, or if the trial is delayed beyond the prescribed period.

15. For the forgoing reasons, applicant Muhammad Aquib Akbar son of Abdul Shakoor is admitted on post-arrest bail in Crime No.60 of 2024, under Section 409/420/468/471/477-A/109/34 PPC registered at PS FIA Crime Circle, Hyderabad, subject to furnishing solvent surety in the sum of Rs.2,00,000/- [Rupees two lac only] and PR Bond in the like amount to the satisfaction of the learned trial court.

16. The observations made in this order shall not prejudice the case of either party on merits before the trial court.

17. Above are the reasons assigned in support of our short order dated 21.11.2024.

JUDGE

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