

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2483 of 2024
(Muhamamd Farooq 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:-05.12.2024

Mr. Shoukat Hayat advocate for the applicant
Pir Riaz Muhammad Shah, DAG along with Inspector Muhammad Bux of PS
FIA, Hyderabad.

ORDER

Adnan-ul-Karim Memon J:- The applicant, Muhammad Farooq, has filed a post-arrest bail application, challenging the trial court's rejection of his previous bail plea. The trial court denied bail, stating that the applicant and his accomplices were accused of misappropriating funds meant to construct a Social Security Hospital in the Ghotki district and the applicant was/is a beneficiary of the certain amount landed in his account.

2. The facts of the prosecution case are that Enquiry No. 134/2023 of FIA Crime Circle Hyderabad, which was initiated based on the complaint of a government contractor, Salman Sharif, (Complainant) who was awarded a contract to build a hospital in Dehrki, District Ghotki. After completing the work, he did not receive his final payment. An investigation was carried out which revealed that a fraudulent bank account was opened in the name of Salman Sharif's firm at MCB Gari Khata Branch. A cheque for the final payment was deposited into this account and then quickly transferred to another account linked to applicant Muhammad Farooque, Director of SESSI, and his brother accused. The investigating officer implicated several individuals, including the applicant, who allegedly orchestrated the fraud. Co-accused Muhammad Irfan allegedly Opened a fraudulent bank account. Co-accused Shujat Ali collected and deposited the fraudulent cheque. Bank officials processed the account without proper due diligence. The fraudulent scheme resulted in the loss of Rs. 7,250,749/- to the complainant. The F.I.A. police have filed the charge sheet against the

applicant and others for fraud, forgery, and criminal conspiracy related to a case registered in FIR No. 51/2024.

3. The learned counsel for the applicant/accused has mainly contended the applicant is falsely accused of the alleged crime and there's no direct evidence against him. He argued that the applicant did not open or operate the fraudulent bank account as portrayed and was not involved in forging documents, misappropriating public funds, or causing loss to the Bank to attract the banking court's jurisdiction. The counsel also argued that the trial court's decision to deny bail to the applicant was unjustified and liable to be set at naught and the applicant may be released on bail due to the lack of strong evidence against him. Additionally, he pointed out that other co-accused involved in the fraud had been granted bail by the trial court, and the applicant may be treated similarly. The counsel argued that there is no direct evidence linking the applicant to the crime of criminal breach of trust or cheating to attract the subject sections of PPC. He claimed that the applicant did not hold public office and was not entrusted with any public property. Additionally, there is no evidence suggesting that the applicant defrauded anyone or acquired property illegally. He added that the complainant Salman Sharif in his statement under section 161 CrPC has not alleged that the applicant/accused has fraudulently issued the cheque and thereafter opened and operated the alleged account, therefore, there are reasonable grounds to believe that the applicant/accused has not committed the offense under section 409/419/420/468/471/477-A PPC, which factum require further inquiry at this stage. He emphasized that under the 1984 Ordinance, the maximum punishment for the alleged offenses is less than 7 years thus the offenses do not fall within the prohibition contained in section 497(1) CrPC. The counsel argued that the applicant may be granted bail as the alleged offenses are not punishable by 10 years or more, as per the *Tariq Bashir case* reported in **PLD 1995 SC 34**. He next contended that even in the past in 2019, Muhammad Irfan (attorney) while acting on behalf of M/s Salman Sharif Government Contractor & Supplier filed a CP bearing No. 1140/2020 before this court at Hyderabad against the SESSI department with the allegations that despite the completion of work and issuance of the certificate, third and last bill was not issued but that CP was subsequently withdrawn as SESSI department had issued the cheque. He has further contended that upon the instructions of Salman

Sharif the said cheque was deposited in the company's account and the complainant was sole beneficiary of such amount. He emphasized that the evidence in support of the prosecution case has yet to commence and the prosecution is expected to produce evidence of a conclusive nature to prove the ingredients of the crime alleged to have been committed and till that applicant cannot be kept behind the bar. He added that evidence in this case is documentary and is all in F.I.A's. possession and the guilt of the applicant is yet to be proved. He prayed for allowing the bail application.

4. Learned Deputy Attorney General assisted by the Investigating Officer argued against the bail application, stating that the applicant/accused was/is involved in a complex fraud scheme. He in connivance with his accomplices opened a fraudulent bank account, received a government cheque, and then transferred the funds to accounts linked to the Applicant Muhammad Farooque, Director of SESSI, and his brother co-accused. The bank officials were/are also involved in processing the account and failed to conduct proper due diligence, contributing to the fraud. He further argued that since the offenses are cognizable and non-bailable and punishable for up to 10 years, the same falls within the prohibitory clause of Section 497 Cr.P.C. It is also argued that if the applicant/accused is granted bail, at this stage, there is apprehension that he might use his influence to tamper with the prosecution evidence. He prayed for the dismissal of the bail application.

5. We have heard the arguments of the learned counsel for the parties, on the merits of the bail application, at some length and perused the record of the case minutely.

6. The applicant is accused of fraud and embezzlement. He remained a beneficiary of RS. 22,00,000/- out of questioned funds. During inquiry proceedings, it transpired that he allegedly conspired with his accomplices to misappropriate funds released for the construction of a Social Security Hospital in the Ghotki District. The funds were allegedly diverted to a fake bank account. The investigating officer has filed a charge sheet against the applicant and others for various offenses, arising out of FIR No. 51/2024 for the offenses under Section 409/419/420/467/468/471/477-A/109 & 34 PPC, of FIA Crime Circle Hyderabad.

7. Bail can be denied in cases involving fraud, forgery, cheating, and criminal conspiracy if the prosecution can establish a strong prima facie case against the accused. In the present case, the learned counsel for the applicant has been unable to explain why the applicant has been a beneficiary of Rs. 2200,000/- credited into his account No. 1286-0221929371001739 from the account of his brother Abdul Latif Sheikh (co-accused). The learned counsel although submitted the said payment was the internal transaction between two brothers i.e. Abdul Latif and the applicant, yet remained unable to explain the nature of the said transaction.

8. The doctrine of parity suggests similar treatment for similarly situated accused. While co-accused have been granted bail, the applicant's direct involvement in the embezzlement differentiates them.

9. The trial Court, after a thorough and careful examination of the material available on the record of the case, has observed in the impugned order that there is sufficient incriminating material available on record showing strong nexus of the applicant with this case and has therefore declined the grant of relief of post-arrest bail to the applicant. It is the practice of this Court not to intervene in bail matters ordinarily, leaving them to the discretion of the courts inquiring into the guilt of the accused persons unless it is found that the trial court has exercised the discretion arbitrarily, perversely, or contrary to the settled principles of law regulating bail matters. In terms of the ratio of the judgments of the Supreme Court in the cases of *Haq Nawaz v. State* **1969 SCMR 174** and *Zaro v. State* **1974 SCMR 11**. The learned counsel for the applicant has failed to point out that the said observation of the High Court and the exercise of discretion in declining the relief of bail to the petitioner in offenses, some of which fall within the prohibitory clause of Section 497(1) CrPC as well as the prohibitory provisions of Section 5(6) of the Offences in Respect of Banks (Special Courts) Ordinance 1984, are the result of gross misreading of the material available on record, and are thus arbitrary and perverse, or that the trial Court has acted contrary to some settled principle of law in exercise of that discretion.

10. It is by now well-established that bail is not to be withheld as a punishment. However, refusal of bail to an accused found prima facie involved in the commission of offenses falling within the prohibitory clause of Section 497(1) CrPC is not a punitive measure but is more of a

preventive step, taking care of the bi-focal interests of justice towards the right of the individual involved and the interest of the society affected. The law presumes that the severity of the punishment provided for offenses falling within the prohibitory clause of Section 497(1) CrPC is such that it is likely to induce the accused person to avoid conviction by escaping trial or by tampering with the prosecution evidence including influencing the prosecution witnesses. The law allows bail, in such cases, if there are no reasonable grounds for believing that the accused has committed a non-bailable offense, but there are sufficient grounds for further inquiry into his guilt. Otherwise by declining bail, the courts ensure the presence of the accused person to face trial and protect the prosecution evidence from being tampered with or the prosecution witness from being influenced. The courts attempt to balance the interest of society in bringing the offenders to justice and the presumption of innocence in favor of the accused person, by determining whether or not there are reasonable grounds for believing that the accused person has committed the offence, in exercising their discretion to grant or decline the relief of bail. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Muhammad Arshad Nadeem Vs the State 2021 PLD SC 927.

11. The court denies bail until the prosecution presents its evidence. The trial court must frame charges and examine the complainant within a month. The applicant can reapply for bail if the complainant's evidence favors them. In this background, we find that the conclusion of the trial Court that there are reasonable grounds for believing that the applicant has committed the offenses alleged is consistent with the incriminating material available on the record of the case, and is in no manner perverse or arbitrary. The bail application being devoid of merit is hereby dismissed.

12. Suffice it to say that the observations made hereinabove are tentative and only for this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court decision of the case on merits.

13. These are the reasons for our short order dated 05.12.2024 when the bail plea of the applicant was declined.

JUDGE

JUDGE

