

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. B.A. No. S-527 of 2016

DATE ORDER WITH SIGNATURE OF JUDGE

Applicant : Shahabuddin, through Mr. Asif Ali Abdul Razzak Soomro, advocate

Respondent : The State, through Mr. Khadim Hussain Khooharo, D.P.G.

Date of Hearing : 07.11.2016

Date of Order : 07.11.2016

**ORDER**

**ZAFAR AHMED RAJPUT, J:** After rejection of his earlier bail application vide order dated 28.10.2016, passed by the learned Special Judge Anti-Corruption (Provincial) Larkana in Cr. B. A. No.125/2016, applicant Shahabuddin S/o Zainul Abideen has approached this Court to seek post-arrest bail in Crime/ F.I.R No. 03 of 2016, registered at Police Station ACE, Jacobabad under section 161 P.P.C., r/w Section 5 (2) of Act-II of 1947.

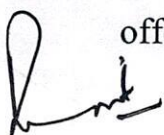
2. Briefly stated facts of the case are that on 19-10-2016 complainant Asghar Ali S/o. Muhammad Saleh Samejo lodged the aforementioned F.I.R. alleging therein that he jointly owned agricultural land, admeasuring 63 jarebs, situated in Deh Zangi Pur, Taluka Thul, which they sold out some time back; hence, they met with Tapedar of the beat, namely, Shahabuddin Dayo (applicant) for issuance of sale certificate and change of foti khata in respect of 15 jarebs of land for that he demanded Rs. 1,00,000/= as illegal gratification and finally agreed to receive Rs. 50,000/=, as such at that time Rs. 10,000/= were given to him in presence of witnesses and remaining



amount of Rs. 40,000/= was to be paid on the day of lodging F.I.R. hence, trap party apprehended the applicant/accused from Al-Harman Hotel and recovered tainted money in presence of the magistrate,

3. Mr. Asif Ali Abdul Razzak Soomro, learned counsel for the applicant, has contended that the applicant is innocent and has been falsely implicated in this case due to departmental intrigues. Mr. Soomro has further contended that alleged offence does not fall within the prohibitory clause of section 497 (1) Cr. P.C., and in such cases the grant of bail is a rule and refusal is an exception. In this regard, he has placed his reliance upon the case of Tariq Bashir and 5 others v. The State (PLD 1995 SC 34). Mr. Soomro has also contended that even otherwise the trap party, as per trap report, did not overhear the conversation between the applicant/accused and the complainant, hence entire exercise of trap is futile and, in such situation, no sanctity can be attached to it and the guilt of applicant/accused cannot be established without recording the evidence hence, the question of applicant's guilt would require further enquiry; therefore, he is entitled for grant of bail.

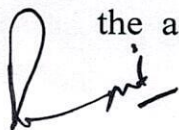
4. Conversely, Mr. Khadim Hussain Khooharo, learned D.P.G. has opposed the instant application by submitting that the Court seized of jurisdiction for examining the question of bail should make only tentative assessment of the facts/ evidence without making detailed reference to the merits. He has further submitted that the applicant was apprehended by the trap party and tainted money i.e. Rs. 40,000/= was recovered from the possession of applicant and since the offence is of nature which affects the society at large, he is not entitled for concession of bail, though alleged offence does not fall within the prohibitory clause of section 497 Cr. P.C .



He has; however, admitted that nothing is mentioned in the trap report if trap party had seen the transaction and heard the conversation between the applicant and complainant.

5. I have given due consideration to the arguments of the learned counsel for the applicant and D.P.G., and perused the material available on record.

6. It appears from the perusal of trap report, dated 19.10.2016, prepared by the I<sup>st</sup> Judicial Magistrate, Jacobabad that Shoukat Ali Rind, the Circle Officer handed over currency notes of Rs. 40,000/= to complainant at police station ACE, Jacobabad for delivering the same to applicant/accused, after that they came at Al-Harman Hotel, where complainant along with mashir Sohail Rana went inside hotel, whereas the Judicial Magistrate and ACE staff remained at some distance wherefrom parties could easily be seen. After some time applicant came at hotel and seated with complainant, then Judicial Magistrate and ACE staff received signal from complainant, thereupon they rushed and trapped the applicant/accused on pointation of the complainant. As such, trap party neither witnessed the delivery of tainted money by the complainant to applicant/accused not they did hear the conversation between them in respect of handing over of the tainted money, Hence, it is yet to be determined if the tainted money allegedly recovered by the trap party was in fact illegal gratification paid by the complainant to applicant/ accused, which is necessary to prove the charge of receiving illegal gratification by the applicant/accused, as held by the Honourable Supreme Court of Pakistan in the case of Bashir Ahmed v. The State (2001 SCMR 634) that the transaction not only to the payment of bribe money to the accused by the complainant is to be seen but also the conversation



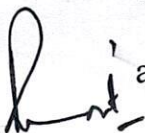
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between them has to be heard by the members of the raiding party. Under the circumstances, I have found the case of the applicant is of further inquiry as envisaged under sub-section 2 of Section 497 Cr.P.C.

7. Besides, the offence under section 161 P.P.C. is punishable up to three years and Section 5 (2) of the Act-II of 1947 provides punishment up to seven years, hence the alleged offence does not fall within the prohibition contained in Section 497 (1) Cr. P.C. and grant of bail in a case not falling within the prohibitory clause of Section 497 Cr. P.C is the rule and its refusal is only an exception. It goes without saying that in the absence of any exceptional circumstances, withholding of post-arrest bail is not the intention of law. Law as emphatically available in the criminal jurisprudence and repeatedly ordained by Superior Courts aims at ensuring that the accused are made to be available for trial, but it has never been, nor it can ever be, the intention of law to punish the accused for the offence the trial whereof is still pending against him, as the concept of punishment is essentially relatable to the conclusion of the trial.


8. I, therefore, allow this application, the applicant / accused is admitted to bail, subject to his furnishing a solvent surety in the sum of Rs.50,000/= (Rupees Fifty Thousand Only) and PR Bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits and if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.



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10. Above are the reasons of my short order dated 07.11.2016 whereby this Criminal Bail Application was allowed and the applicant was admitted to bail.

  
08/11/2016  
JUDGE