

157

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Bail Application Nos.S-241, 244, 249 & 256 of 2019

(1). Cr. Bail Application No.S-241 of 2019

Applicants : 1. Mumtaz Ali Solangi s/o Mohammad Bux Solangi
2. Karim Bux s/o Mohammad Bux
3. Sadaruddin s/o Abdul Ghafoor
4. Allah Dino s/o Mohammad Shareef
5. Mehrab s/o Haji Abdullah
6. Abdul Sattar Bahalkani,
through M/s. Ghulam Dastagir A. Shahani, Safdar Ali
Ghouri and Athar Abbas Solangi, advocates.

(2). Cr. Bail Application No.S-244 of 2019

Applicant : Abdul Aziz s/o Abdul Wahid Khan Bullo,
through Mr. Asif Ali Abdul Razak Soomro, advocate

(3). Cr. Bail Application No.S-249 of 2019

Applicants : 1. PC Gulabuddin s/o Yar Muhammad Channa
2. PC Ali Gul s/o Tagio Khan Channa
3. PC Saleem Ahmed s/o Abdul Ghafoor Soomro
4. HC Imdad Hussain s/o Khair Muhammad Chandio
5. PC Mohammad Liaquat s/o Bhudal Soomro,
through Mr. Ali Azhar Tunio, advocate

(4). Cr. Bail Application No.S-256 of 2019

Applicant : Ghulam Mustafa s/o Ali Hassan Lashari,
through Mr. Mohammad Afzal Jagirani, advocate.

Respondent : The State,
in all matters through Mr. Ali Anwar Kandhro, Addl. P.G

Date of hearing : 12.03.2020

Date of order : 12.03.2020

ORDER


ZAFAR AHMED RAJPUT, J.-

All aforementioned four criminal bail applications are outcome of one and same crime, hence the same are being disposed of by this common order.



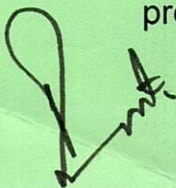
2. Having been rejected their earlier criminal bail applications bearing Nos. 198, 209, 203 and 212 of 2019 respectively, by the learned Special Judge Anti-Corruption (Provincial) Larkana, vide common order dated 29.04.2019, the applicants/accused through these criminal bail applications seek post arrest bail in Crime/FIR No.GO-03 of 2018, registered at P.S, ACE, Kashmore-Kandhkot, under Sections 409, 420, 467, 468, 470, 471, 34, P.P.C., read with Section 5(2) Act-II of 1947.

3. Briefly stated, the facts of the prosecution case are that on 05.12.2018, Inspector Shahid Bashir Khoso, Circle Officer ACE Kandhkot after the approval of competent authority and pursuant to the result of an enquiry in to complaint No. 07/2017 of ACE Kashmore-Kandhkot, as well as enquiry report of AIGP, Sindh Karachi lodged the aforesaid FIR on behalf of the State. The allegations are that accused Bashir Ahmed Buriro, Jr. Clerk/Accountant, SSP Office, Kashmore-Kandhkot in collusion with other officials of SSP Office, namely, Gul Zubair Domki, Jr. Clerk, HC Imdad Ali Chandio of Police Line, Kashmore-Kandhkot, PC Hidayatullah Khokhar, PC Gulabuddin Channa and PC Ali Gul Channa of Accounts Branch SSP Office, Kashmore at Kandhkot, and officials of District Accounts Office (DAO), Kashmore at Kandhkot, namely, Abdul Aziz Bullo, Mohammad Suleman Mirani and Hassan Ali Deenari, the then DAOs, Ghulam Mustafa Lashari, Sub-Accountant, DAO and officers of National Bank of Pakistan, Kandhkot Branch, namely, Abdul Sattar Bahalkani, AVP/Operation Manager, Mehrab Khan Khoso, Passing Officer, Sadaruddin Channa, Head Cashier, Karim Bux Daudpoto and Mumtaz Ali Solangi, Computer Operators and Allah Dino Channa, Cashier illegally prepared bogus bills of different heads i.e. HESCO charges Rs.6.5 Million, supplementary difference bill of Rs.8,89,39,060/-, monthly pay



withdrawal of Rs.2,32,21,996/-, poll charges of Rs.1,37,71,806/-, illegally edited 101 tampered cheques amounting to Rs.32,65,67,459/-, transferred illegally Government funds amounting to Rs.89,11,077/- and illegally created fake I.Ds in District Kashmore as well as they managed bogus order of Jr. Clerk Zubair Ahmed Domki through bogus signature of Din Mohammad Baloch, Ex-DIG Larkana and illegally managed bogus order of constable Hidayatullah Khokhar, working in Accounts Branch as Junior Clerk, without observing Codal formalities, publication of post in newspapers, written test & viva-voce, thus the above-named accused persons with the connivance of each other committed the offence of corruption, fraud, forgery, misappropriation by misusing of their official powers.

4. M/s. Ghulam Dastagir A. Shahani, Safdar Ali Ghouri and Athar Abbas Solangi, learned counsel for the applicants/accused in criminal bail application No. S-241 of 2019, have contended that the accused are innocent and have falsely been implicated in the case; that there are general allegations against all the accused and no specific allegation has been leveled against any of the accused with regard to commission of offence; that four nominated co-accused have already been let-off by the investigating officer hence, the enquiry reports on the basis thereof the instant FIR has been lodged have lost the credibility; that all the six applicants/accused are officers of NBP of Kandhkot Branch and they are not related with the preparation of alleged bills and creation of I.Ds and they have no nexus with the appointments of Jr. Clerk Zubair Ahmed Domki and Constable Hidayatullah Khokhar; that as per banking procedure of payments, whenever a cheque issued by a department is presented in the bank for payment, it is accepted by the bank for payment



and the holder of cheque in due course is paid subject to availability of funds in account; that the cheques are Negotiable Instruments and section 89 of the Negotiable Instruments Act, 1881 provides "*where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed*"; hence, none of the bankers/accused has committed any illegality or wrong by entertaining alleged cheques and they acted in discharge of their lawful duties in accordance with banking rules and regulations; that the alleged offences does not fall within the prohibitory clause of section 497, Cr. P.C and since the entire prosecution case rests on documentary evidence which is in possession of prosecution, no question of tempering of the same arises in case accused are admitted to bail; that the prosecution case is highly doubtful and ambiguous and therefore, guilt of accused requires further inquiry as envisaged under section 497 (2), Cr. P.C.

5. Mr. Asif Ali Abdul Razak Soomro, learned counsel for the applicant/accused in criminal bail application No. S-244 of 2019, has argued that as per FIR the alleged incident has taken place from 2012 to 2017 and the FIR has been recorded on 05.12.2018 with delay of 1 to 6 years for which no plausible explanation has been furnished; that accused Abdul Aziz Bullo has served as District Accounts Officer,



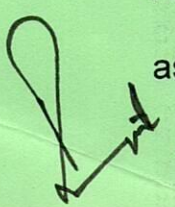
Kashmore; that all the bills of Government departments are released by the Drawing & Disbursing Officer (DDO) of the concerned departments and the said accused is not competent to do so while no officer who was holding the powers of DDO from 2012 to 2017 has been interrogated or even cited as witness in the case; hence entire version of complaint is baseless; that no details of alleged misappropriation of amount has been furnished by the prosecution in the challan; therefore, inference can be drawn that the case has been registered on the basis of presumption and assumption without any cogent evidence.

6. Mr. Ali Azhar Tunio, learned counsel for the applicants/ accused in criminal bail application No. S-249 of 2019, has asserted that the accused are police constables and head constable of police department and have been implicated in the case with other officials of District Accounts Office and NBP; that section 409, P.P.C. has no application against the accused as they never been entrusted with any amount nor they criminally misappropriated or converted any such amount to their own use, similarly sections 466, 467, 268 and 470, P.P.C. have no application against the accused as there is no charge of forgery against them and the rest of sections are non-cognizable except section 5(2) of Act-II of 1947 which is cognizable and is punishable up to seven years and hence the same does not fall within the prohibitory clause of section 497, Cr. P.C; that since preparation and issuance of bills, issuing of appointment letters and creation of fake I.Ds is not the function of accused, they cannot be connected with the commission of any alleged offence; that after investigation police has submitted the challan however, no details of the misappropriation of the amount on the part of accused has been given and only general allegations have been leveled against them.

7. Mr. Mohammad Afzal Jagirani, learned counsel for the applicants/accused in criminal bail application No. S-256 of 2019, while adopting the arguments of learned counsel for the accused in other connected criminal bail applications, has emphasized that the accused has served as Sub-Accountant in District Account Office, Kashmore at Kandhkot and though he has been nominated in the FIR, yet no specific allegation of corruption, fraud, forgery and misappropriation has been attributed to him and the allegations against him are of general nature; that no reasonable ground exists to believe that the accused is guilty of the offense with which he has been charged, hence he is entitled to bail.

8. Per contra, learned Addl. P.G while opposing grant of bail to accused has maintained that the accused in collusion with each other have committed forgery and misappropriated millions of rupees causing loss to public exchequer; that the FIR has been lodged after due enquiry; that the investigating officer has recorded the statements of as many as 15 witnesses under section 161, Cr. P.C. who have fully connected the accused with the commission of alleged offence; that some of the nominated accused have been let off by the investigating officer as during investigation no incriminating material could be collected against them to connect them with the commission of alleged offence, however, sufficient evidence is available against the present accused to connect them with commission of alleged offence; that alleged offence falls within prohibitory clause of section 497, Cr. P.C and the deeper appreciation of evidence is not permissible at bail stage under the law.

9. Heard the learned counsel for the applicants/accused as well as Addl. P.G and perused the material available on record with their assistance.



10. It appears that the applicants/accused are confined in judicial custody since 16.04.2019 and ACE has already submitted the challan against them; hence, they are no more required for investigation and thus, their further detention will not serve any useful purpose. Documentary evidence on which prosecution case is based has already been collected by the prosecution and the same is not likely to be tempered by the accused as it is in the custody of prosecution. Co-accused (1) Hassan Ali Deenari and (2) Mohammad Suleman Mirani, the then District Account Officers of District Kashmore (3) Gul Zubair Domki, Junior Clerk SSP Office, District Kashmore and (4) PC Hidayatullah Khokhar, Accounts Branch SSP Office, District Kashmore who were named in enquires and thus nominated in the FIR have been let off by the investigating officer without assigning as cogent reason hence, element of partial investigation cannot be ruled out. Sections 420 and 471, P.P.C are bailable while sections 466, 468, P.P.C and 5(2), Act-II of 1947 being punishable for seven years do not fall within the prohibitory clause of section 497(1), Cr. P.C So far sections 409 and 467, P.P.C are concerned it is yet to be determined by the trial Court after recording evidence if the accused are guilty of criminal breach of trust and forgery as defined respectively under section 405 and 463, P.P.C. So far the applicability of section 34, P.P.C. is concerned, individual and collective roles of applicants/accused are different; therefore, question of sharing common intention or vicarious liability is to be decided at the time of trial.

11. It also appears from the FIR that following four allegations of corruption, fraud, forgery, misappropriation etc. in SSP Office, Kashmore-Kandhkot have been leveled against the officials of three departments

viz. Police, District Accounts Office Kandhkot and National Bank of Pakistan, Kandhkot Branch:

- (i) Illegally prepared bogus bills of different heads i.e. HESCO charges of Rs.6.5 Million, supplementary difference bill of Rs.8,89,39,060/-, monthly pay withdrawal of Rs.2,32,21,996/- poll charges of Rs.1,37,71,806/-, illegally edited 101 tampered cheques amounting to Rs.32,65,67,459/-, transferred illegally Government funds amounting to Rs.89,11,077/-
- (ii) Illegally created fake I.Ds in District Kashmore
- (iii) Managed bogus order of Jr. Clerk Zubair Ahmed Domki through bogus signature of Din Mohammad Baloch, Ex-DIG Larkana
- (iv) Illegally managed bogus order of Constable Hidayatullah Khokhar, working in Accounts Branch as Junior Clerk, without observing Codal formalities, publication of post in newspapers, written test & viva-voce.

12. As regard first allegation, the alleged illegal and bogus bills of different heads have admittedly neither been prepared in the District Accounts Office, Kandhkot nor in National Bank of Pakistan, Kandhkot Branch nor even the same were not prepared by the applicants/officials of police department, as it is function of the official who has been delegated with the power of DDO to prepare the same. In the instant case, it appears that in the relevant period Umer F. Salamat, Muhammad Younus Chandio and Umar Taufail were posted as SSP, Kashmore and they were having power of DDO, but nothing is available on record in respect of their roles in the case, even they have not been cited as prosecution witnesses. The accused indeed were not in any manner in commanding position in their respective offices to issue said bills. As regard second allegation, it may be observed that creating I.Ds is admittedly not the function of the officials of police department and bank and it is yet to be

ascertained as to who had opened the fake I.Ds in concerned District Account Office, and who was the beneficiary of the alleged wrong. As regard third and fourth allegations, it may be observed that in investigation the order of Jr. Clerk Zubair Ahmed Domki was found to be correct while Constable Hidayatullah Khokhar was let off by the investigating officer. Under the circumstances, I have found the case against the applicants/accused one of further inquiry into their guilt, as envisaged under subsection (2) of Section 497, Cr. P.C. Accordingly, they are admitted to bail subject to their furnishing solvent surety in the sum of Rs.5,00,000/- (Rupees Five Lacs only) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

13. 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 accused on merits. In case accused try to misuse the concession of bail in any manner, it would be open for the trial Court to cancel their bail after issuing them the requisite notice.


JUDGE