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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Applns. No. S- 317 and 322 of 2016.

Date

Order with signature of Judge.

1. For orders on office objection as flag A.
2. For hearing.

02.12.2016.

Mr. Ashfaq Hussain Abro, advocate for the applicant Shashpal Das in Cr. Bail Appln. No. S-317 of 2016.

Mr. Saeed Ahmed Bijarani, advocate for applicant Qamar Shahbaz in Cr. Bail Appln. No. S-322 of 2016.

Mr. Sardar Ali Shah, A.P.G a/w Abdul Hafeez, C.O Ghotki and WHC Misri Khan, ACE.

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Muhammad Iqbal Kalhoro-J.- Applicant Shashpal Das has filed a Cr. Bail Appln. No. S-317 of 2016 and applicant Qamar Shahbaz has filed a Cr. Bail Appln. No. S-322 of 2016 in Crime No. 04 of 2016 U/S 409, 465, 466, 467, 471, 477-A, 34 PPC at Police Station ACE Kashmore at Kandhkot and by this common order both these bail applications are disposed of.

Brief facts of the prosecution case as per F.I.R are that on 17.6.2016 Inspector Sanaullah Awan, ACE Kashmore-Kandhkot on behalf of the state lodged F.I.R, stating therein "that this case has been registered after approval of competent authority in the result of enquiry into HRC complaint No. 15399-S/2013 received from Honourable Supreme Court of Pakistan Islamabad that complainant Sikander Ali Sabzoi alleged that during the year 2009-2010 accused Abdul Khaliq Panhyar was posted as District Officer Roads Kashmore @Kandhkot, during his posting he in collusion with other officers/officials of Highways Division Kashmore-Kandhkot Ghulam Rasool Balcoh, AEN, Khadim Hussain Panhyar AEN Highway Sub-Division Kandhkot, Qamar Shahbaz Pathan Sub-Engineer, Abdul Rauf Bijarani Sub-Engineer, Nazir Hussain Jakhrani Govt. Contractor, Abdul Razzaque Bahlkani Govt. Contractor and Shashpal Das Govt. Contractor illegally prepared bogus M.Bs of construction of various link roads i.e. Link Road of village Allah Dino Sabzoi, Link Road of village Sikander Khan Sabzoi and Link Road village Rafique Ahmed Bijarani and illegally made payment to concerned Govt. Contractors. It is alleged that the XEN Highway Division Kashmore @Kandhkot reported vide his office No. XEN/(HW)/HC/573 dated 31.05.2013 that no any scheme/work

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with the name of Mehar Shah and Sikander Sabzoi pertain to Highway Department, but XEN Highway Division Kashmore-Kandhkot pointed and detected the Government loss in schemes pertaining to above said HRC complaint i.e construction of Link Road from Kandhkot Malguzar to Allah Dino Sabzoi Road mile 0/4-1/0 less worth Rs.7,68,578/- construction of Link Road from Ghouspur Tangwani Road to Rafique Ahmed Bijarani alongwith Zor Gar Shakh Road mile 1/7-2/4 loss worth Rs.19,32,711/- and construction of Link Road from Ghouspur Tangwani to Rafique Ahmed Bijarani alongwith Zor Gar Shakh mile 2/4-3/1 loss Rs.16,45,039/- total caused loss to Government worth Rs.43,46,328/-, hence this F.I.R."

Learned Defence Counsel have mainly argued that the applicants are innocent and have been falsely implicated in this case; that there is no evidence showing that the alleged misappropriation of amount was committed by them, and that the schemes against which the loss has been shown were in fact completed at the relevant time which is evident from the progress reports of concerned XEN prepared in the month of June, 2011 and June, 2015 and to support such contentions learned counsel have submitted the Photostat copies of such reports. They have further contended that entire prosecution case is based on documentary evidence which is in possession of the prosecution, there is no likelihood of its being tampered with by the applicants; that the offence does not fall within prohibitory clause U/S 497 Cr.P.C; that applicants were arrested on 17.6.2016 and uptill now only interim challan has been submitted. Learned counsel, in support of their arguments, have relied upon the case laws reported in 2003 P.Cr.L.J 447, 1996 SCMR 1132, 2014 YLR 1723.

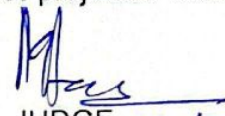
On the other hand, learned A.P.G has opposed grant of bail to the applicants.

I have considered the submissions and perused the material available on record. In the F.I.R in all eight accused are nominated out of whom six have been shown absconders. It appears that only the applicants were arrested during investigation. The main allegations contained in the F.I.R are of preparing bogus M.Bs to draw illegal payment. Although the name of applicant Qamar Shahbaz is mentioned but it is not stated that what role was played by him in preparation of such M.Bs and whether he being Sub-Engineer was authorized to prepare and make the illegal payments through M.Bs or not. In the investigation also prima facie no such evidence has been collected against him. As to the allegations against applicant Shashpal Das that he has received a certain amount as contractor, the

contention of learned counsel is that he had completed the required work at the relevant time in the year 2009-10 which is evident from progress report prepared in the year 2011. A perusal of such report shows that the scheme i.e Ghouspur-Tangwani to Rafique Bijarani link road against which the alleged payment was made to the applicant is mentioned at Sr.No.12/90 and it is shown to have been completed upto 85%. This document prima facie, has not been denied by the other side. Applicants are in jail since 17.6.2016 and are no more required for further investigation as the interim challan is already submitted. The other accused are shown absconders, therefore, there is no likelihood of conclusion of the trial in near future. The entire prosecution case is based on documentary evidence which is in possession of the prosecution, therefore, there is no likelihood of the same being tampered with by the applicants.

In such circumstances, I am of the view that applicants are entitled to the grant of bail. Resultantly they are granted post arrest bail subject to their furnishing a solvent surety in the sum of Rs.200,000/= each and P.R bond in the same amount to be executed before the trial Court.

The bail applications are disposed of in above terms. The findings recorded here are tentative in nature and would not prejudice either party in the trial.


JUDGE 02-12-2016.

shabir