

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Sp.Cr.Bail Application No.33 of 2012

Date	Order with signature of Judge
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FOR HEARING.

Date of hearing 24.07.2012.

M/s Khawaja Naveed Ahmed & Khaleeq Ahmed,
Advocates for Applicant/ Accused

Mr. Aashiq Anwer Rana, Advocate for Complainant

Mr. Pir Riaz Shah, Standing Counsel a/w M.Azam
Nafees, IRAO I/O Directorate of ISI-IR-Karachi.

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SYED MUHAMMAD FAROOQ SHAH J: Through this application Under Section 497 Cr.P.C. filed on behalf of the Applicant namely Khurram Aftab Vohra, a prayer to grant post arrest bail has been made. The earlier application filed before the learned trial Court was dismissed by an order dated 01.03.2012.

2. brief facts of the case are that on a self-initiated scrutiny of data of sales tax returns various registered person shown nominal payment of net tax, despite huge input/put tax

transactions, it has been observed that some unscrupulous elements registered under sales tax are involved in committing tax fraud for generating bogus invoices thereby involved in filing of incorrect and false sales tax returns. On physical verification of the premises of M/s. Orthodox & Co. the accused registered person was not found on their declared address which indicates that they have deliberately declared wrong or fake address. The analysis of information/details retrieved from FBR's e-portal/integrated Tax Management System (ITMS) and information received/gathered from other sources, revealed that the illegal/inadmissible input tax have fraudulently been adjusted by the accused on the basis of fake purchases/input tax declarations through returns as the relevant suppliers have either not declared any sales to the accused in respective returns or they have filed Nil returns or were found Non-filers. Consequently the subsequent supplies declared through returns by the accused are patently fake, accordingly sales invoices generated/issued in favour of beneficiaries against fake supplies have also become fake and bogus, knowingly, dishonestly and fraudulently involved in filing false sales tax returns and issuance of fake sales tax invoices, M/S Mirror Corp. (Supplier) & others M/s. Orthodox & Co. (Buyer), for the period October, 2009 to 12, 1020. On further investigation it was revealed that a person namely Khurram Aftab Vohra is the actual proprietor of M/s. Orthodox & Co. and maintaining a bank Account No. 06-6913137 at NIB Bank Ltd. North Karachi Industrial Area Branch and operating from his office at Shop No. 8 Madina Centre, Opposite Madras Hotel Jodia Bazar, Karachi. On further scrutiny of bank details it was confirmed that out of 25 cheques two cross cheques in the name of Orthodox & Co. amounting to Rs. 1.463 million were credited in the bank account of Khurram Aftab Vohra. During further investigation it was also revealed that accused Khurram Aftab Vohra is also maintaining a number of Benami bank accounts in the name of M/s. Orthodox & Co. at Faysal Bank Nazimabad, Islamic Branch and KASB Bank

Hydery and 18 cheques involved amount of Rs. 13.283 millions were credited in Faysal Bank Account No. 3007310000811 of Orthodox & Co. and two cheques involving Rs. 2.245 million were cleared from KASB Bank Hydery Branch in Orthodox & Co. Account No. 0042-131343-001 hence M/s Orthodox & Co. operated by accused Khurram Aftab Vohra and other companies in connivance with each other individually and jointly committed the tax fraud by way of issuing fake sales tax invoices and adjusting illegal input tax on the basis of fake sales tax invoices and fake/bogus import. By committing this tax fraud the accused deprived the national exchequer of its legitimate revenue to the tune of Rs. 120.0 million and has violated the provision of Sales Tax Act, 1990. The applicant was arrested on 19.2.2012.

3. Grounds agitated for bail by the learned Counsel for the applicant are that the applicant/accused has falsely been implicated by the complainant without realizing the fact that no offence committed by the applicant cognizable under the Sales Tax Act and that the applicant neither registered person nor involved in tax fraud as alleged by the complainant. That neither the accused/applicant is supplier and availed any financial benefit through tax fraud nor ever issued any invoice or filed any return. As such he has no concern with the M/s. Orthodox & Co. the applicant neither visited bank for depositing and withdrawal of cheque nor beneficiary in this case and has no knowledge for credit and withdrawal of any amount from the bank as alleged in the FIR. He argued that the case of prosecution consisted upon documentary evidence which are in possession of the complainant and there is no apprehension of tempering as such documents collected by the Investigating Officer also not connected the accused in the alleged crime. He next argued that offence, under which the applicant was charged is compoundable, carries maximum punishment of three years and does not fall within the prohibitory clause, therefore,

bail is to be granted as a rule and refusal is an exception. In support of his contention learned Counsel for the applicant has placed reliance on 1996 SCMR 1132, 2011 P.Cr.L.J. 1983 and an unreported order passed in Sp. Cr. Bail Application No. 25 of 2004. According to him in identical cases the applicant/accused were admitted on bail.

4. On the other hand, Advocate for the complainant assisted by Standing Counsel vehemently opposes the bail on the ground that the applicant is involved in the issuance of fake invoices hence the applicant is main functionary of tax fraud and has played a vital role with the active connivance of other parties in crime, depriving the public exchequer from its regime revenue. Thus above named accused and his associates in corporation have committed the tax fraud with all due deliberation, ulterior motives and criminal intent for an offence falls within ambit of section 2(37), 3, 8, 8-A, 6, 7, 23, 26 & 73 of the Sales Tax Act 1990, punishable under section 33 (II) (C) and Section 13 (ibid). The learned Counsel for the complainant argued that in none of the cases this court has granted bail to accused person except in cases where such accused person have deposited the fraudulent availed tax refund. In support of his contentions learned Counsel for the complainant placed reliance on citations reported as ZAHEER HUSSAIN V/S THE STATE (PLD, 2006 Karachi 397) and IMTIAZ AHMED & ANOTHER V/S THE STATE (PLD 1997 SC 545), unreported order dated 25.6.2012 passed in Special Criminal Bail Application No. 92 of 2012 and order dated 12.7.2012 passed in Special Criminal Bail Application No. 39 of 2012

5. I have considered the arguments advance from both sides and perused the material available on the record and the case law as well.

6. learned trial court while observing that in this case Rs. 120 million fraudulently obtained by the applicant and burden to prove is upon the applicant under section 37(2) of the Sales Tax Act, 1990; M/s Orthodox & Co. is the registered person and the name of one Faiz Mohiuddin is mentioned as a registered person on behalf of the company, the account opening form of Account No. 06-6913137 NIB Bank shows the applicant is the sole proprietor of M/s Orthodox & Co. Learned trial court dismissed the bail application in the following words:

“Sufficient material is available on record to connect the applicant/accused with the commission of alleged offence. In my humble view the applicant/accused has failed to make out case of further enquiry. Hence his bail plea is rejected. In my humble view the case law placed on reliance by the learned Advocate for applicant/accused are not applicable to the case in hand as facts and circumstances of this case are distinguishable for the facts of these citations. The bail application is dismissed accordingly.”

7. In the case of Imtiaz Ahmed (supra) His lordship Mr. Justice Ajmal Mian observed at Para 7 in the following words:-

“I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497, Cr. P.C. in the absence of an exceptional

circumstance may be followed, but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentence is less than 10 years' R.I. for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.

The Courts should not be oblivious of the fact that at present Pakistan is confronted with many serious problems/ difficulties of national and international magnitude, which cannot be resolved unless the whole Pakistani nation as a united entity make efforts. The desire to amass wealth by illegal means has penetrated in all walks of life. The people commit offence detrimental to the society and the country for money. Some of the holders of the public office commit or facilitate commission of offences for monetary consideration. In the above scenario the Courts' approach should be reformation-oriented with the desire to suppress the above mischives. To achieve the above objective, it is imperative that the Courts should apply strictly the laws which are designed and intended to eradicate the above national evils but at the same time, they are duty bound to ensure that the above approach should not result in miscarriage of justice. It should not be overlooked that Article 9 of our Constitution, which relates to a fundamental right, guarantees life and liberty of every person. Life, inter alia, includes the right to have access to a fair and independent judicial forum for redress. A balance is to be struck between national and individual interest/right".

8. Available record transpires that the supplier of the registered person (accused) either did not exist or did not declare any sale to him. More-so, according to sale invoices issued by the supplier the fact remains that the supplier of the applicant/accused did not exist nor the accused person was found doing business at the declared place. The Hon'ble Apex Court while drawing distinction in between offences against individual and offence against the society as a whole for the purpose of bail, observed in the case of Imtiaz Ahmed (supra) relevant paras reproduced at para 7 ante that the practice to allow bail in cases not falling under prohibitory clause of section

497 Cr.P.C., in absence of any exceptional circumstances may be allowed but in cases like present one, the court should be strict in exercise of discretion of bail. Suffice is to say that case of the applicant squarely falls within the latter category and does not entitle him to bail.

9. Sufficient prosecution evidence has been collected by the prosecution to connect the applicant/accused with the commission of offence, as alleged, therefore, looking into the gravity and the manner in which the crime is committed coupled with surrounding circumstances, does not entitle him for bail, particularly it is obviously ambush against whole society. Suffice to say that this case falls within the scope of exception and there are reasonable grounds to believe that the present applicant in connivance with escaped/absconders actively participated in commission of white color crime against the state and society as a whole. The reasons recorded by the Learned Trial Court in refusing to exercise discretion in favour of the applicant by admitting him on bail cannot be described arbitrarily so as to justify interference by this Court.

10. The case laws cited by the learned Counsel for the applicant has thoroughly been examined by me, the same are distinguishable in facts and circumstances of the present case and are not applicable as there are exceptional circumstances those are to be taken into consideration. It would be against the norms of justice, if I would like to make any detail observation at this stage and in my view, it would be sufficient and proper to observe that material placed before me by the learned Counsel for the complainant supported with the case law involve the applicant in huge fraud of government ex-chequer. In these circumstances, I reached at the irresistible conclusion that the applicant/accused is not entitled to be released on bail and consequently the

application is rejected. However, the observation made hereinabove shall not effect the merits of the case, being tentative in nature.

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