

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE SYED HASAN AZHAR RIZVI

CRIMINAL PETITION NO. 701 OF 2023

(On appeal against the order dated 29.05.2023 passed by the Lahore High Court, Lahore in CrI. Misc. No. 12514-B/2023)

Ch. Saeed Ahmed Khalil

... Petitioner

Versus

The State etc

... Respondents

For the Petitioner:

Malik Jawwad Khalid, ASC

Mr. Muhammad Sharif Janjua, AOR a/w
petitioner in person

For the State:

Mirza Abid Majeed, DPG

Mr. Ashgar Ali, SI/IO

Mr. Ahsanullah, SI, Incharge Investigation

For the Complainant:

Mr. Muhammad Javed Ch, ASC

Date of Hearing:

11.08.2023

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 29.05.2023 passed by the learned Single Judge of the learned Lahore High Court, Lahore, with a prayer to grant pre-arrest bail in case registered vide FIR No. 464 dated 18.03.2020 under Sections 420/468/471 PPC at Police Station Shalimar, Lahore, in the interest of safe administration of criminal justice.

2. Briefly stated the prosecution story as narrated in the crime report is that the petitioner's son namely Furqan Saeed was employed in the complainant's factory wherein the spare parts of the motorbikes were manufactured and its scrap was used to be sold in the market. The said Furqan Saeed used to take scrap from factory and got it weighed. Allegedly, he used to get two receipts, one of full weight and the second of lesser weight and despite receiving full amount used to deposit less amount to the

factory. On suspicion, the record was checked and the son of the petitioner was found to have caused a loss of Rs.700,00,000/- to the complainant. The petitioner has been implicated through a supplementary statement of the complainant recorded on 26.06.2023.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the allegations leveled against the petitioner are false, frivolous, baseless, concocted and the prosecution story is not worthy of credit. Contends that the petitioner was not named in the FIR and the subsequent story put forth by the complainant in his supplementary statement recorded after three months of lodging of FIR does not appeal to a prudent mind. Contends that the principal accused namely Furqan Saeed has been granted post-arrest bail by the court of competent jurisdiction, therefore, following the rule of consistency, the petitioner also deserves the same treatment to be meted out.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant opposed the petition by contending that the petitioner has specifically been nominated by the complainant in the supplementary statement with a specific role of depriving him of a huge amount, therefore, he does not deserve any leniency from this Court.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

6. As per the contents of the crime report, the complainant is the CEO of Yousaf Engineering (Pvt) Ltd where spare parts of motorcycle are manufactured and its scrap is sold to the scrap dealers. The son of the petitioner namely Furqan Saeed was servant of the complainant, who had been taking scrap to get it weighed and later sold to scrap dealer. Allegedly, the said Furqan Saeed used to obtain two receipts, one of full weight and the later of less weight and used to deposit the amount in factory in accordance with the receipt of less weight and thereby caused a loss of Rs.700,00,000/- to the complainant. We have noted that the complainant nominated the present petitioner and his other family members in his supplementary

statement recorded on 26.06.2023 after lapse of more than three months and eight days of the occurrence. A bare perusal of the record depicts that the entire fraudulent transaction took place in a span of more than two years and no specific dates for commission of fraud have been given. The only basis to involve the petitioner in the case was the detail of his bank account, as the complainant suspected that the principal accused Furqan Saeed would have deposited the amount in petitioner's account. It is the case of the petitioner that his son Furqan Saeed was running a joint business with the complainant and he never received any salary from him. We have been informed that the co-accused of the petitioner namely Mst. Nighat Saeed, Waqas Zafar and Usman Saeed have been granted pre-arrest bail whereas the principal accused Furqan Saeed has been granted post-arrest bail by the court of competent jurisdiction. In these circumstances any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The State through Prosecutor General of Punjab and another (2022 SCMR 1424). Keeping in view the peculiar facts and circumstances of the present case, the possibility cannot be ruled out that the petitioner has been involved in the case by throwing a wider net by the complainant. Mere fraud of huge amount is no ground to decline bail to an accused. It is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271). This Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations. So far as the argument of the learned counsel for the complainant that another case of similar nature has been registered against the petitioner is concerned, mere registration of

other criminal case against an accused does not disentitle him for the grant of bail if on merits he has a *prima facie* case. Reliance is placed on Moundar and others Vs. The State (PLD 1990 SC 934). Taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt.

7. For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned order and confirm the *ad interim* pre-arrest bail granted to the petitioner by this Court vide order dated 27.07.2023.

JUDGE

JUDGE

Islamabad, the
11th of August, 2023
Approved For Reporting
Khurram