

2024 S C M R 1103

[Supreme Court of Pakistan]

Present: Jamal Khan Mandokhail, Syed Hasan Azhar Rizvi and Musarrat Hilali, JJ

Syed SAKHAWAT HUSSAIN---Petitioner

Versus

The STATE and another---Respondents

Criminal Petition No. 155 of 2024, decided on 21st March, 2024.

(Against the order dated 14.02.2024 passed by Lahore High Court, Lahore in Crl. Misc. No. 5258-B of 2023).

Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 34, 109, 406, 419, 420, 467, 468 & 471---Constitution of Pakistan, Art. 185(3)---Banking scam---Bail, grant of---Further inquiry---Accused was alleged to be one of the beneficiaries of a banking scam, who had received part of the misappropriated amount---Petitioner (accused) was not named in the list of 287 account holders who were nominated in the alleged unlawful transactions---Sole allegation against the petitioner was that his bank statements indicated receipt of a certain amount in his account as a beneficiary from an account holder of the bank---However, it was notable that the account holder in question from whom the amount was transferred to the petitioner was not implicated or nominated in the FIR---Furthermore, the alleged amount was not transferred to the petitioner's account at the bank where the scam occurred but was received allegedly in an account maintained by the petitioner at another bank, which was registered in the name of a business---Mere receipt of funds in a bank account could not be construed as proof of involvement in the scam at present stage as there was insufficient and incomplete material available on the record to establish any connection of the petitioner---Petitioner's criminal liability could only be determined after recording of evidence by the Trial Court---Mere nomination of the petitioner in the FIR without substantive material and without nominating the account holder by whom the amount was allegedly transferred in the bank account of the petitioner's company was insufficient to justify his further detention---Petitioner was behind the bars for more than nine months, and there was no likelihood of progress in the trial---Case of the petitioner was one of further

inquiry---Petition was converted into an appeal and was allowed, and the petitioner was granted bail.

Syed Asim Ali Bukhari, Advocate Supreme Court for Petitioner.

Mughees Malik, Advocate Supreme Court for the Complainant.

Malik Javed Iqbal Wains, Additional Attorney General for Pakistan and M. Sheraz, I.O. FIA for the State.

Date of hearing: 21st March, 2024.

JUDGMENT

SYED HASAN AZHAR RIZVI, J.---Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution") the petitioner (Syed Sakhawat Hussain) has called in question the order dated 14.02.2024 passed by the Lahore High Court in the Crl. Misc. No. 5258-B/2023 whereby his post arrest bail application was dismissed.

2. The petitioner was booked in FIR No. 74/2023 dated 17.04.2023 in respect of offences under Sections 34, 109, 406, 419, 420, 467, 468 and 471, P.P.C. registered at Police Station, FIA District Bahawalpur.

3. Precisely, the facts of the case are that between 2022 to 2023 a bank scam was committed by the account holders and branchless agents of the Habib Bank Limited wherein allegedly more than 146 million rupees were overdrawn and embezzled. HBL filed a complaint before FIA Bahawalpur and identified 339 account holders who were involved in that scam. After conducting an Enquiry No. 269/2023 by the FIA, the aforementioned FIR was registered wherein 287 account holders and 32 beneficiaries were nominated. The name of the petitioner is mentioned in the FIR as one of the beneficiaries of such scam at Serial No.6 and his liability has been determined to the tune of Rs. 4,409,684.58/- with the allegation that he has received the misappropriated amount.

4. Learned Counsel for the petitioner contends that Petitioner is not an account holder shown in the list of 287 Account holders who were found to have committed unauthorized transactions; that petitioner was charged as a beneficiary who received certain amount through his bank account and was listed at Serial No.06 in the second part of the FIR; that the account holder who transferred the alleged amount to the petitioner was not nominated in the FIR thus, case of petitioner is one of further inquiry.

5. On the contrary, learned Counsel for the respondent/complainant by defending the impugned order contends that an organized crime has been committed against the bank that has resulted in a huge loss to the bank and petitioner was identified as one of the beneficiaries of such illegal transaction.

6. We have heard the learned counsel for the parties and perused the material available on the record with their able assistance.

7. It transpires from the record that the petitioner was not named in the list of 287 account holders who are nominated in the alleged unlawful transactions. The

sole allegation against the petitioner is that his bank statements indicate receipt of a certain amount in his account as a beneficiary from account holder of HBL. However, it is notable that the account holder in question from whom the amount was transferred to the petitioner was not implicated or nominated in the FIR. Furthermore, the alleged amount was not transferred to the petitioner's HBL Account but was received allegedly in an account maintained by the petitioner in Bank Al-Falah registered in the name of Chishti Motors Safari Garden.

8. The record further reveals that the petitioner is nominated in FIR being a beneficiary in the scam with allegations suggesting receipt of misappropriated funds. The grant of bail is a fundamental right and must be considered in light of the circumstances of each case, mere receipt of funds in a bank account cannot be construed as proof of involvement in the scam at this stage as there is insufficient and incomplete material available on the record to establish any connection of the petitioner. Petitioner's criminal liability can only be determined after recording of evidence by the Trial Court. The mere nomination of the petitioner in the FIR without substantive material and without nominating the account holder by whom the amount was allegedly transferred in the bank account of the petitioner's company is insufficient to justify his further detention.

9. In the case reported as Muhammad Nawaz Alias Karo v. The State (2023 SCMR 734) this court has held:--

"This court has time and again held that the liberty of the person is a precious right which cannot be taken away unless there are exceptional grounds to do so. Merely on the basis of the bald allegations, the liberty of person cannot be curtailed."

In the present case, petitioner is behind the bars since 14.06.2023, and there is no likelihood of progress in the trial. In light of facts and circumstances narrated above, the case of the petitioner is one of a further inquiry.

10. In view of above discussion, this petition is converted into an appeal and is allowed. The petitioner is granted bail subject to his furnishing bail bonds to the tune of Rupees five lacs only with one surety in the like amount to the satisfaction of the Trial Court. The petitioner be released from jail forthwith, if not required to be detained in any other case.

11. Before parting, it is reiterated that the observations made hereinabove are tentative in nature. The trial Court is at liberty to independently adjudicate the case on its own merits, without being influenced by the observations made hereinabove.

12. Above are the reasons of our short order of even date.

MWA/S-13/SC Bail granted.