

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-791 of 2024
(Abdul Malik Munhano Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Hearing of post-arrest bail

- 1. For orders on office objections at flag ‘A’
- 2. For hearing of bail application.

ORDER.
05-05-2025.

Mr. Shamsuddin N. Kobhar advocate for the applicant/accused.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

Ali Haider ‘Ada’,J:- Through this application, the applicant Abdul Malik son of Ameer Bux by caste Munhano seeks his post arrest bail in Crime No. 28/2024, registered under Sections 395 PPC at Police Station Khenjo. The said FIR was lodged by the complainant, Sohrab. Prior to filing the instant application, the applicant had approached the learned Sessions Judge Ghotki for relief of post-arrest bail, who transferred the matter to the learned Additional Sessions Judge Daharki; however, his application for grant post-arrest bail was declined vide order dated 18-10-2024.

2. The essence of the case of prosecution is that the complainant, along with his witnesses, was present at the land on 25.08.2024 at 2:00 PM, grazing their cattle. At that time, the applicant, accompanied by a group of co-accused and allegedly armed with firearms, forcibly took possession of 15 head of cattle from the scene. Due to the fear of weapon, the complainant party kept silent. Subsequently, the complainant approached the accused persons and requested the return of the cattle. However, the accused refused to return.

Consequently, on 03.09.2024, the complainant lodged a FIR, initially under Section 382 of PPC and after conclusion of the investigation and submission of the challan, the section was altered and Section 395 PPC was inserted. During the course of investigation, the applicant was arrested on 08.09.2024 and has remained in judicial custody facing trial ever since.

3. Perusal of the case file reveals that on 31.10.2024, notice was issued to the complainant. Subsequently, on 06.12.2024, a repeated notice was issued through the concerned SSP. In response thereto, on 23.12.2024, the complainant Suhrah appeared before the Court and submitted that he had engaged Mr. Attaullah Bhutto, Advocate, as his counsel, who was not present on that day but would appear on the next date of hearing. Accordingly, on the request of the complainant, the matter was adjourned to 13.01.2025, a date which was admittedly within the knowledge of the complainant. However, on 13.01.2025, neither the complainant nor his counsel appeared despite repeated calls. Consequently, notice was again issued to the complainant. Thereafter, on 13.03.2025, this Court once again issued notice to the complainant. Even, an affidavit of SIP Manzoor Ahmed Bozdar, posted at Police Station Khenjo, is available on record, wherein he affirmed that he had informed the complainant via cell phone and that the complainant had undertaken to appear before the Court, yet he chose to remain absent. It is pertinent to observe that the complainant, having appeared and been informed of the next date of hearing, was under a legal obligation to pursue his case attentively. His absence despite due notice and prior knowledge, suggesting an attempt to obstruct the proceedings by ensuring that the matter could not be heard in his absence. In such circumstances, this Court is left with no option but to proceed to hear the parties present and decide the matter based on the material available on record.

4. Learned counsel for the applicant contends that there is an unexplained delay of eight days in the lodging of the FIR. It is further submitted that despite the arrest of the applicant, no incriminating recovery has been affected from his possession, and he is no longer required for the purposes of investigation. Learned counsel argues that the offence under Section 395 PPC, as applied in the final challan, also carries a lesser punishment and in the circumstances of the case, the element of lesser punishment should be considered at the bail stage. In support of his contention, learned counsel places reliance on the judgments reported as *Shehzore and another vs. The State* (2006 YLR 3167) and *Ali Akbar vs. The State* (2011 P.Cr.L.J 445). As, finally prays for grant of post-arrest bail.

5. Conversely, the learned State Counsel vehemently opposes the grant of bail, contending that the alleged offence falls within the prohibitory clause of Section 497 Cr.P.C., as the applicant is nominated for the commission of dacoity under Section 395 PPC. He further submits that the delay in lodging the FIR was caused due to the false hope extended by the accused party that the cattle would be returned, which ultimately did not materialize, compelling the complainant to report the matter after a lapse of time. In view of the serious nature of the allegations and the gravity of the offence, the learned State Counsel prays for the dismissal of the bail application.

6. Heard arguments and perused the material available on record.

7. A perusal of the record reveals that there is a delay of eight days in the registration of the FIR, for which no satisfactory explanation has been provided. The justification offered by the prosecution that the delay occurred due to a hope extended by the accused regarding the return of the stolen cattle appears to be unconvincing. Such presumptions, particularly when relating to serious offence like robbery, cannot override the statutory obligation to promptly report a

cognizable offence. The explanation appears to be an afterthought and does not inspire confidence. Reliance is placed upon the case of *Atta Muhammad vs The State 2020 PcrLJ 1221*.

8. Furthermore, the applicant has been in custody for over seven months, during which period no recovery has been effected from his possession. It is also an admitted position that the applicant is no longer required for the purpose of investigation.

9. It is further submitted that the offence under Section 395 PPC pertains to the punishment for *dacoity*, which, as per the scheme of the Pakistan Penal Code, is defined under Section 391 PPC. According to Section 391 PPC, *dacoity* is said to be committed when five or more persons conjointly commit or attempt to commit *robbery*. In this context, it is essential to refer to the definition of *robbery* provided under Section 390 PPC, which is reproduced herein for reference:

"390. Robbery. – In all robbery there is either theft or extortion.

When theft is robbery. – Theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint."

10. A bare perusal of the FIR reveals that there is no specific allegation that the accused persons caused or attempted to cause death, hurt, or wrongful restraint, nor is it alleged that they used any express words or committed any act intended to create a *fear of instant death, hurt, or wrongful restraint*. The complainant party merely stated that, owing to the presence of weapons, they did not resist, however, such a generalized expression of fear does not fulfill the legal threshold required under Section 390 PPC.

11. Thus, the essential elements required to attract the provisions of Sections 390 and 391 PPC are conspicuously absent from the FIR and the prosecution case. In view of the above, and keeping in mind, at this stage, appears to fall within the ambit of *further inquiry* as contemplated under Section 497(2) Cr.P.C.

12. In view of the foregoing reasons, the applicant/accused named above makes out a case for grant of post arrest Bail. Accordingly, the Bail Application is allowed and applicant/accused is admitted to post arrest Bail subject to furnishing his solvent surety in the sum of Rs. 100,000/- (One lac) and P.R Bond in the like amount to the satisfaction of learned trial Court.

13. Needless to mention that the observation made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

J U D G E

Ihsan/PS.