

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 423 of 2020

Crl. Bail Application No. S- 448 of 2020

For hearing of bail applications

Haji Shamsuddin Rajper Advocate for applicant in Crl. B. A. No. S- 423/2020.

Mr. Faiz Muhammad Brohi Advocate along with applicant in Crl. B. A. No. S- 448/2020.

Mr. Khalil Ahmed Maitlo, Deputy P.G for the State.

Date of Hearing: 31-08-2020

Date of Order: 31-08-2020

ORDER

Aftab Ahmed Gorar J. Through captioned Crl. Bail Applications, applicant Shah Muhammad Mari (Crl. B. A. No. S- 423 of 2020) seeks post-arrest bail, while applicant Bakho alias Abu Bakar (Crl. B. A. No. S- 448 of 2020) seeks pre-arrest bail in Crime No.01 of 2020, registered at P.S, Baho Dero-Naushehro Feroze for the offences under Sections 395, 506/2, 452 PPC. Earlier the bail pleas of both the applicants were declined by learned trial Court vide orders dated 23.06.2020 and 25.07.2020.

2. The allegation against the present applicants is that on 02.06.2020, they duly armed with weapons in association with co-accused Nasrullah committed the robbery of one Tractor, one gold ring of ladies, two pairs of gold ear rings, one gold Mal ring, one Tikka and cash of Rs. 75,000/- from the house of complainant. It is further alleged in the FIR that in the morning, complainant party took the footprints of

culprits and wheel marks of Tractor with the help of foot tractor and villagers, which disappeared near the house of accused persons and thereafter on the advice of Nekmards, complainant lodged the FIR on 03.06.2020 at 1500 hours.

3. Learned counsel appearing on behalf of the applicant Shah Muhammad argued that the said applicant is innocent and has nothing to do with the alleged offence, as applicant Shah Muhammad was not identified by the complainant party in the FIR, but as co-accused Nasrullah called the said applicant by name, as such he has been implicated in this case; that the recovery of alleged Tractor and pistol has been foisted upon the said applicant, even otherwise, alternate punishment of alleged offence is four years which is to be considered at bail stage, as such his case calls for further enquiry. In support of his contentions, learned counsel relied upon case of Abid alias Aabi Arain v. The State **(2016 PCr.LJ Note 109)**, Zahid Maseeh and another v. The State **(2012 MLD 814)**, Muhammad Usman and another v. The State **(2018 YLR Note 270)** and Zameer Hussain and another v. The State **(2017 YLR Note 381)**.

4. Learned counsel appearing on behalf of applicant Bakho alias Abu Bakar argued that the said applicant is innocent and has falsely been implicated in this case by the complainant with ulterior motives and mala fide intentions; that the incident is alleged to have taken place at odd hours of night and the source of identification of culprits has been disclosed as bulb light, which is a weakest type of source and cannot be relied upon safely; that no recovery has been effected from

the possession of said applicant; that after grant of interim pre-arrest bail by this Court, said applicant has never misused the concession of bail and is regularly attending the trial Court. Lastly, he prayed for confirmation of interim pre-arrest bail earlier granted to applicant by this Court.

4. As against these arguments, learned DPG for the State opposed these applications on the ground that applicants are nominated in the FIR and recovery of Tractor and pistol was effected from the possession of applicant Shah Muhammad.

5. Heard learned counsel for the parties and perused the material available on record meticulously. Insofar as the case of applicant Shah Muhammad is concerned, no doubt the recovery of robbed Tractor and pistol was effected from his possession, but the same is to be determined by the trial Court after recording evidence as in the Mashirnama of arrest and recovery, it is disclosed that on 03.06.2020 at 1700 hours, police arrested the said applicant and recovered robbed Tractor and pistol from his possession, but surprisingly after consuming sufficient time in conducting all codal formalities i.e. enquiring his name, conducting his personal search, recovering of Tractor and pistol etc, the Mashirnama was prepared at same time i.e. 1700 hours, which requires further probe. Furthermore, the source of identification of applicant Shah Muhammad, as disclosed in the FIR, is that he was called by co-accused Nasrullah by name. Moreover, the source of identification of the applicants, as disclosed in the FIR, is bulb light, which is a weakest type of source and cannot be relied upon

safely. The minimum punishment of Section 395 PPC is four years and it is settled principle that lesser punishment of the offence is to be considered at bail stage. Furthermore, applicant Bakho alias Abu Bakar is regularly attending the trial Court as there is no complaint with regard to misuse of concession of interim pre-arrest bail.

6. For what has been discussed above, I am of the considered view that the applicant Shah Muhammad has made out a case for further enquiry, as envisaged under Sub-Section 497(2) Cr.P.C so also applicant Bakho alias Abu Bakar has also made out a case for confirmation of interim pre-arrest bail. Consequently, interim pre-arrest bail earlier granted to applicant Bakho alias Abu Bakar vide order dated 17.08.2020 by this Court is hereby confirmed on same terms and conditions, while applicant Shah Muhammad is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 100,000/-(One Lac) with PR bond in the like amount to the satisfaction of trial Court.

7. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided strictly on its own merits after recording evidence.

8. The captioned Crl. Bail Applications stand disposed of in the above manner.

JUDGE

Ahmad