

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Mohammed Karim Khan Agha, J.

Criminal Bail application number, name of the Applicant and his counsel.

Criminal Bail Application No.1000 of 2017 Ashrf Shah
V. The State.

Through Mr. Abdul Hakeem, Advocate for the applicant.

Ms. Rahat Ahsan, learned Additional Prosecutor General, for the State.

Mr. Muhammad Islam Leghari, Advocate for the Complainant.

Date of hearing: 23.10.2017

Date of order: 23.10.2017.

ORDER.

Mohammed Karim Khan Agha, J: Through this Criminal Bail Application, the applicant seeks confirmation of his pre-arrest bail in crime No. 28/2017, under Section 392/337-F(iv)/337-F(ii)/337-L(ii) PPC lodged at P.S. Darro, District Thatta.

2. The prosecution case as narrated in the FIR are that on 06.05.2017 the complainant was present at his house and his wife was ill and he asked his son Hussain to bring medicine from Sim Nail Kari Mori. His son went out and on mobile informed that after purchasing medicine while returning from Sim Nail the accused persons Fayyaz Shah and Ghulam Rasool @ Khado armed with pistols, stopped him and robbed away the motorcycle and when they were coming towards village the complainant alongwith Zulfiqar Shah and Juman Shah reached beside the Sim Nail at 2300 hours and saw that accused Fayyaz Shah, Rasool Bux, Ashraf Shah armed with lathies/sticks, and Akhtar Shah, Ayaz Shah having lathies and one unknown person present there. The

complainant parties stopped the motorcycle and asked Ashraf Shah why they robbed away the motorcycle from his son Saddam Hussain upon which accused Ashraf Shah became annoyed and caused lathi blow which hit him on small finger of the right hand and accused Akhtar gave lathi blows on the back of Saddam Hussain.

3. Learned counsel for the applicant / accused submitted that the applicant was innocent and that there had been a delay of 21 days in lodging of the FIR and as such his pre-arrest bail should be confirmed.

4. Learned Additional Prosecutor General for the State and the complainant vehemently opposed the confirmation of bail of the applicant / accused on the grounds that the name of the applicant / accused is mentioned in the FIR with his specific role, therefore, he is not entitled for the confirmation of the bail.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. It is settled law that in order to grant pre-arrest bail there must be some element of mala fide on the part of the police or the complainant. Reference in this respect may be made to the cases of **Rana Mohammed Arshad V. Muhammad Rafique** (PLD 2009 SC 427) and **Mukhtar Ahmad v. The State and others** (2016 SCMR 2064). The applicant has not alleged any mala fide, whatsoever, and as such on this ground alone his pre-arrest bail deserves to be dismissed.

7. Even otherwise, the offense u/s 392 PPC falls within the prohibitory clause; the applicant has been nominated in the FIR and has been given a specific role; the medical report supports the version of the prosecution; the statement u/s 161 Cr.P.C of Saddam Hussain, Abdul Sattar and Juman Shah also fully support the case of the prosecution.

Ordinarily, a delay of 21 days in lodging of the FIR may have been detrimental, if not fatal, to the prosecution case. However, it appears that the incident occurred on 06.5.2017 but the police refused to register the FIR on that date. Instead the complainant had to approach the District Court for registering his FIR which was ordered by the said Court on 25.5.2017 which explains the delay in registering the FIR.

8. In the light of above, I am of the view that the applicant has failed to show any mala fide on the part of the police or the complainant and in addition there is sufficient material on record to prima facie connect the applicant to the offence for which he has been charged and as such pre-arrest bail granted to him earlier by this Court is hereby recalled. The trial Court however is directed to immediately record the statement/evidence of the complainant and complete the trial within three months of the date of this order. The office shall transmit a copy of this order to the concerned trial Court for compliance.

9. These are the reasons for my short order announced in open Court on 23.10.2017.