

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 667 of 2017

Applicant : Farhan Hassan, son of Sagheer Hassan through Mr. Wazir Hussain Khoso, Advocate
The State : Ms. Seema Zaidi, D.P.G. along with SI Fahmeed Shah of P.S. Shah Faisal Colony.
Complainant : Muhammad Qamar-ul-Huda, present in person.
Date of hearing : 01.08.2017

ORDER

ADNAN-UL-KARIM MEMON, J. – The Applicant namely Farhan Hassan son of Sagheer Hassan is seeking Pre-arrest Bail in F.I.R. No.29/2017 registered for offences under section 392, and 34 P.P.C. at Police Station Shah Faisal Colony, Karachi.

2. Brief facts of the case are that on 02.02.2017 Complainant lodged F.I.R against four unknown persons with allegation that on 02.02.2017 Complainant after purchasing 50 prize bonds of Rs. 40,000/- denomination each from State Bank of Pakistan was going home on motorcycle; that at around 2:00 p.m. when Complainant reached Azeem Poora, near Sitara Palace Marriage Hall, Block 2, Shah Faisal Colony, Karachi all of a sudden 2 persons stopped them on gun point; that their 2 other companions armed with weapons also came there and snatched envelope containing prize bonds from the Complainant, mobile phone (NOTE/4) Sim No. 03322240575 from his son and other material; that while snatching away said things they

also fired on the ground and fled away on their motorcycles. Thereafter, Complainant lodged above specified F.I.R against unknown persons under section 392/34 P.P.C.

Investigating Officer visited place of incident, recorded statement of witnesses, obtained Call Data Record of mobile and got conducted F.S.L of one recovered bullet shell and on 15.02.2017 obtained report. Initially, Investigating Officer did not get any clue of accused persons therefore; on 27.2.2017, case was disposed of as 'A' class while investigation continued. Investigating Officer on the basis of CCTV footage, on 15.3.2017 arrested accused namely Aftab Waheed, and recovered from his possession 50 Prize Bonds of Rs. 750 denomination each, 24 Prize Bonds of Rs. 200 denomination each and 30 Prize Bonds of Rs. 100 denomination each, got his Identification Parade conducted on 21.3.2017; that accused Abdul Waheed also disclosed names of 5 co-accused involved in the crime; On 17.03.2017 Investigation Officer arrested co-accused/Muhammad Ihsan and recovered from his possession 5 Prize Bonds of Rs. 200/- denomination each. On 1.3.2017 Investigating Officer obtained record of snatched mobile 'that accused Farhan Hassan is using his Sim No 03452528437 in that mobile, after said progress, Investigating Officer submitted Charge Sheet on 03.04.2017, by adding section 395, 397 and 109 P.P.C against all accused before learned Judicial Magistrate, Karachi, East.

3. Per learned counsel Applicant being aggrieved by inclusion of his name in the Charge Sheet approached the court of learned Sessions Judge, Karachi, East for pre-arrest bail, the same was transferred in the court of VIth Additional Sessions Judge Karachi East, which was granted and subsequently said interim bail was recalled vide impugned Order dated 05.05.2017. Thereafter, on 15.05.2017 applicant approached this court for grant of pre-arrest bail, which was

granted vide Order dated 15.05.2017 subject to confirmation or otherwise.

4. Mr. Wazir Hussain Khoso, learned counsel for the Applicant has contended that Applicant is innocent and has been falsely implicated by Complainant in collusion with the Investigating Officer with malafide intention; that Applicant is a driver and has nothing to do with the alleged crime; that name of the Applicant does not transpire in the F.I.R nor in the Complainant's statement recorded under section 161 Cr.P.C.; that allegation against Applicant is that he used snatched mobile to contact co-accused persons involved in the instant crime but, no evidence is placed on record by the prosecution to connect Applicant with the alleged crime; that Investigating Officer has wrongly applied section 109 P.P.C. against the Applicant with malafide intention; per learned counsel Applicant, after obtaining interim bail has joined investigation and proved his innocence before Investigating Officer; that no incriminating material has been recovered from the possession of Applicant; that name of Applicant is given by co-accused in his confessional statement before police which is not admissible in evidence under Article 38 of the Qanun-e-Shahadat Order, 1984; that case of Applicant is different from other accused persons; that the case of Applicant requires further inquiry, therefore, Applicant is entitled to concession of Pre-arrest Bail.

5. Ms. Seema Zaidi, learned D.P.G., has opposed grant of Pre-arrest bail to Applicant on the ground that Applicant has used robbed mobile of Complainant with his own Sim card which was on surveillance through its IMEI number; that co-accused namely Aftab Waheed is identified by the Complainant during identification parade; that Applicant along with his companions is involved in heinous crime of robbery; that it has transpired in the Call Data Record of Applicant that he was involved in rekeying of crime with his companions; that

prosecution has collected sufficient incriminating material to connect Applicant with the crime; that there is no malafide on the part of Complainant or police therefore, no extra ordinary relief (bail) can be given to the Applicant.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. That tentative assessment of record reflects that name of the Applicant is not mentioned in the F.I.R. and he is charge sheeted on the ground that he used snatched mobile phone (under surveillance) to contact co-accused persons. Therefore, prosecution has applied section 109 P.P.C. against Applicant for hatching conspiracy in connivance with co-accused persons but Investigation Report is silent on this aspect of the case.

8. Prima facie prosecution has not collected incriminating material which could attract section 109 P.P.C. against the Applicant. Mere obtaining Call Data Recording of snatched mobile phone does not lead, at this stage to the conclusion that Applicant is hatching conspiracy, in connivance with the main accused or he abated the offence of robbery with co-accused. That so far as section 395 and 397 P.P.C. are concerned prosecution has not alleged that Applicant has robbed the Complainant but, he is booked under section 109 P.P.C. therefore, case of the Applicant requires further enquiry.

9. Apparently, Applicant is implicated on the basis of statement of co-accused which is not admissible in evidence under Article 38 of Qanun-e-Shahadat Order, 1984 hence; benefit of doubt can be extended to Applicant at the bail stage.

10. Investigating Officer present in court stated that Applicant is no more required by him for the purpose of investigation.

11. I am of the view that grant of pre-arrest bail is an extra ordinary relief which is extended in exceptional circumstances when glaring malafide is shown on the part of prosecution to cause unjustified harassment and humiliation of person in case of his arrest.

12. In my considered view it is not proper to depend on ipsi dixit of police regarding guilt or innocence of Applicant, which is to be determined on the basis of evidence, which is yet to be proved but prima facie at this stage sufficient incrimination material is lacking connecting the Applicant with the commission of alleged offences, and prosecution has yet to establish its case regarding application of section 395, 109 P.P.C at trial. It is well settled by now that where evidence with regard to the allegation of abatement or instigation is lacking the concession of bail can be extended in favour of Applicant. Besides, Applicant has pointed out malafide on the part of Police, therefore, he is entitled to concession of bail.

13. In view of the above facts and circumstances of the case, I am of the opinion that Applicant/Accused has made out a case for grant of Pre-arrest Bail hence, Interim Pre-arrest Bail granted to Applicant vide Order dated 15.05.2017 is hereby confirmed subject to furnishing solvent surety in the sum of 200,000/- (Rupees two lac) and P.R. bond in the like amount to the satisfaction of Nazir of this court.

14. The above findings are tentative in nature which shall not prejudice the case of either party during the trial.

JUDGE

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 888 of 2017

Applicant : Muhammad Ahsan son of Muhammad Aslam
through Mr. Riaz Ahmed Bhatti, Advocate

The State : Ms. SeemaZaidi, DPG along with complainant
Qamar-ul-Huda &SI Fahmid Shah of Police
Station Shah Faisal.

Date of hearing : 01.08.2017

O R D E R

ADNAN-UL-KARIM MEMON, J. – The Applicant namely Muhammad Ahsan son of Muhammad Aslamis seeking bail in F.I.R. No.29/2017 registered for offences under Section 395,397,109 P.P.C., at Police Station Shah Faisal, Karachi.

2. The case of prosecution is that on 02.02.2017 complainant Muhammad Qamar-ul-Huda lodged FIR alleging therein that he along with his son Muhammad BasitQamargoing to State Bank of Pakistan on motorcycle wherefrom they got 50 prize bonds of Rs. 40,000/- each, thereafter they were going to their home, at about 2.00 p.m. when the complainant reached at Azeempura road near Sitara palace marriage Hall Block 2 Shah Faisal colony all of sudden two persons came from their backside on a motorcycle got them stopped on the show of weapon, in the meanwhile their two more companions came there on motorcycle. The culprits who were sitting on rear seats of motorcycles, alighted from it and while showing weapons both accused asked the complainant to hand over them prize bonds which they brought from State Bank. On seeing weapons complainant and his son become afraid and both accused snatched envelope containing prize bonds from the hand of complainant. the accused also snatched mobile phone Note-4 and wallet containing CNIC, driving license, two ATM cards and cash of Rs. 25,000/- from son of the complainant and while leaving here place of incident on their motorcycles. Learned counsel for applicant has further stated that the applicant is quite innocent and has been falsely implicated in this case due to malafide intention and ulterior motives which will be proved at the time of trial. He further submits that according to prosecution co accused Aftab was arrested on 15.03.2017 and he did not disclose the name of present applicant/accused during interrogation, but he disclosed the names of other accused namely Kamaran, Niaz and Rehan to be his companions. Lastly he further submits that during entire course of investigation, the I.O. has not found any direct evidence of alleged dacoity against the applicant/accused and he has been charged

under section 109 P.P.C only while the ingredients of abetment do not attract against the applicant/accused, therefore the case of applicant/accused requires for further inquiry and as per prosecution there is no any direct evidence against the applicant/accused for committing the alleged offence except his present in the Bank, therefore, his implication will be determined at the stage of trial if the CCTV is produced by the prosecution.

3. Mr. Wazir Hussain Khoso, Advocate, learned counsel for the Applicant has argued that the Applicant is innocent and has falsely been implicated by the complainant with malafide intention with the collusion of area police. As per the remand report which is on the record that the applicant is not involved in case of dacoity as well as his name is not mentioned and appearing hereafter with malafide intention by the police. He further argued that the applicant is a law abiding person and old age and also he is patient of Hepatitis C and also suffering with sugar disease. He further argued that arrested accused has been granted to judicial custody on 27.03.2017 by concerned Magistrate in which the accused are no more required for the purpose of investigation which has been over. The applicant is doing his job privately and is not involved in any subversive activity nor involved in any other case. Since the name of applicant is appearing in the remand report the area police is continuously raiding and harassing to the applicant and as well as his family in order to arrest and humiliate them. He further argued that no name of applicant is mentioned in the F.I.R and also previously the case rime was presented before the learned trial Court but the report under section 173 Cr.P.C. was submitted as "A" Class. He lastly argued that applicant/accused is ready to furnish the solvent surety to the entire satisfaction of the court. In support of his contention, he has relied upon the case law reported in 1918 SCMR 935 and PLD 1994 Supreme court of Pakistan 133.

4. Ms. Seema Zaidi, learned Deputy Prosecutor General, Sindh has opposed the grant of bail to the accused on the grounds that during the investigation the case was kept under "A" Class and the present accused used the robbed mobile of complainant with his own SIM card and since the

mobile phone was kept on surveillance through its IMEI number, therefore it was captured and through the present accused two co-accused persons namely AftabWaheed and Muhammad Ihsan whose bail application have already been rejected. the applicant/accused AftabWaheed has been correctly identified by the complainant during identification parade held beore the competent Magistrate.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. I am conscious of the fact that while deciding a bail application this court has to make tentative assessment of the allegations made in the FIR, statements recorded under Section 161 Cr.P.C., nature and gravity of charge, other incriminating material against accused and pleas raised by him.

8. Record reflects that the Applicant was a Chief Financial Officer/Company Secretary of the Premier Insurance Company who used to sign all cheques/vouchers pertaining to account of Company as co-signatory. Audit Report clearly depicts fraud, forgery and embezzlement of funds of the Company by fraudulent means. I have noted that the Applicant has admitted in paragraph No. 7 and 8 of the memo of Bail Application that he used to counter sign around 50 to 100 cheques pertaining to Company Bank account every day, which prima facie connects the Applicant with the alleged crime. The documentary evidence collected by the prosecution also supports the case of the Complainant. The recovery of laptop and other material that is, cheques and payment vouchers is also prima facie showing involvement of the Applicant in the alleged crime.

9. The case of Applicant though is not hit by prohibition contained in section 497(1) Cr.P.C. but under the given circumstances no extra ordinary concession of bail before arrest can be extended to the Applicant. Apparently, sufficient incriminating material has been collected by the police which prima facie connect Applicant with the alleged white color crime.

10. I am of the view that grant of pre-arrest bail is an extra ordinary relief which is extended in exceptional circumstances when glaring malafide is

shown on the part of prosecution to cause unjustified harassment and humiliation of the Applicant in case of his arrest. I have noted that there is nothing on record which could suggest or indicate false implication of the Applicant in the present case. Besides, Applicant has also failed to point out any malafide or ulterior motive on the part of complainant or Police. Therefore, the Applicant is not entitled to concession of bail.

11. The case law cited by the learned counsel for the Applicant is distinguishable from the facts and circumstances of the case in hand.

12. In view of the above facts and circumstances, I am of the opinion that the applicant/accused has not made out a case for grant of pre arrest bail. Hence, Interim Pre-arrest Bail granted to the Applicant vide order dated 13.3.2017 is hereby recalled and the instant bail application is dismissed accordingly.

13. The above findings are tentative in nature which shall not prejudice the case of either party at the trial.

JUDGE