

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 947 of 2018

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on : 24th July, 2018.
 Date of order: : 24th July, 2018.
 For Applicant : Syed Imtiaz Ali Shah, Advocate.
 For State : Mr. Sagheer Abbasi, A.P.G.

Kausar Sultana Hussain, J.:- This bail application is filed on behalf of applicant/accused Muhammad Asad s/o Muhammad Siddique in case F.I.R No.531/2017 dated 14.12.2017, police station Gulishan-i-Iqbal, Karachi for offence under section 395 P.P.C. Applicant/accused preferred bail application before the Court of learned Xth Additional Sessions Judge, Karachi East, which was declined vide order dated 09.07.2018, hence this bail application.

2. Brief facts inscribed in F.I.R are that five accused persons barged in the house of complainant armed with weapons and looted cash, valuables and two licensed pistols and fled away from the place of occurrence. Subsequently, case was disposed of by the police in "A" class vide report dated 29.12.2017. As per case of prosecution, applicant/accused and other co-accused were arrested on 14.06.2018 in case F.I.R No.242/2018 and F.I.R No.241/2018, police station, Gulshan-e-Iqbal, Karachi East for offence under section 23 (i) a, Sindh Arms Act 2013. During interrogation both the accused persons admitted their guilt and involvement in present case. They were also arrested in this crime and produced for identification parade before the learned Judicial Magistrate, where alleged eye witnesses identified both of them, subsequently on completion of investigation challan of the accused was submitted before the Court.

3. Learned counsel for the applicant/accused contended that applicant/accused is quite innocent and has falsely been implicated in this case.

He kept on arguing that accused is not hardened criminal, which fact is obvious from the fact that he is not involved in any other case except one foisted u/s 13(i) a, Sindh Arms Act 2013 and present case. He further argued that identification parade was conducted after six days of the F.I.R by one Dilshad Ahmed, however there is no mention of Dilshad Ahmed in the F.I.R and even in challan of the case. The learned counsel further argued that there is no recovery at all whatsoever from the possession of the applicant/accused. He further contended that investigation has been completed by the police and charge sheet has also been submitted on 27.06.2018, therefore, it is obvious that applicant/accused is not required for further investigation. On the point of applicability of prohibitory clause of section 497 Cr.P.C, the learned counsel relied upon following case laws/citations:-

- i. 2006 YLR 3167.
- ii. 2006 YLR 3042.
- iii. 2016 PCr.LJ 109.

4. Conversely learned DPG has opposed the bail and argued that applicant/accused was identified by the prosecution witness of the incident in an identification parade held before the learned Judicial Magistrate. He contended that recovery of stolen property is not incumbent, if the case is one of dacoity. He lastly contended that no enmity alleged against the complainant and prosecution witnesses who identified the applicant/accused for falsely implication of the accused and that the punishment for the alleged offence is life imprisonment, therefore case falls within the prohibitory clause of section 497 Cr.P.C.

5. I have gone through the arguments of the learned counsel for the applicant/accused, learned DPG for the State and minutely perused the record. Evidently, name of the applicant/accused is not mentioned in the F.I.R nor any recovery of robbed property was made from the applicant/accused. The only piece of evidence against the applicant/accused is his identification during the identification parade held before the learned Judicial Magistrate that he was one

of the companion of the dacoits. The said identification parade was held after six days of the arrest of the accused and almost six months after the incident. Furthermore, wife of the complainant who could be the most reliable witness of the incident did not participate in the identification parade. Minimum punishment for the alleged offence is four years.

6. In view of the above discussion and circumstances of the case, a prima facie case is made out for the concession of bail, accordingly applicant/accused is enlarged to bail against the surety amount of Rs.100,000/- (Rupees One Lac only) with P.R bond in the like amount to the satisfaction of the Nazir of this Court.

7. Needless to mention here that the above observations are tentative in nature and trial Court shall not be influenced with them in any manner whatsoever.

8. Above are the reasons for the short order dated 24.07.2018.

JUDGE