

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No. 537 / 2020**  
**Kaleemullah S/o Wali Muhammad**

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Date

Order with signature of Judge

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For hearing of bail application.

**28.04.2020.**

Mr. Muhammad Shafiq Advocate for Applicant.  
Mr. S. Meeral Shah Bukhari Additional Prosecutor General.  
Along with I/O SI Abdul Karim and complainant Asif Ali

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Through this bail application, the Applicant seeks post arrest bail in FIR No. 03/2020 registered at P.S. Yousuf Plaza, Karachi, under Sections 392, 394 and 34 Pakistan Penal Code. The bail applications of the Applicant moved before the Trial Court stands dismissed vide orders dated 4.3.2020 and 7.04.2020. The second bail application was filed by the applicant after grant of bail to the co-accused in the matter. I have heard the Counsel for the Applicant, learned Additional Prosecutor General as well as the Complainant. My observations are as under: -

- i) As per the contents of the FIR around 9.30 p.m. two person (present accused and another) riding a motorcycle KKJ-7142 with a TT pistol stopped the complainant and his friend when they reached water pump bridge from Sohrab Goth and snatched mobile infinix IS-4 and when they tried to catch them, then they ran away on foot and then one of them fired which injured the complainant and when they shouted a police mobile came and one of them was apprehended and the other ran away.

- ii) It seems very strange that though both accused came on a motorcycle and then tried to run away on foot and even one of them managed to fled away. Not only this they had a pistol and even then instead of complainant and his friend, it is the accused who tried to run away. For the present purposes this casts serious doubts on the story of the complainant.
- iii) The other accused has been granted bail by the trial court on the ground that till date no identification parade has been carried out and he is not nominated with any role in the FIR; whereas, in the FIR it is not stated that it was the present applicant who had fired or the other. The nomination of the present accused in the FIR is only on the ground that he was apprehended at the spot, but it is not the case of the complainant that it was he who had fired from the pistol causing injury to the complainant.
- iv) The complainant is present in court and he has filed his affidavit duly sworn before the Identity branch of this Court stating that present accused is not the same who committed offence against me. While confronted he says that he is not sure as to who fired from the pistol. Moreover, from his appearance he seems to have fully recovered from the injury, leading to the presumption that it was a minor injury. Though such affidavits are not to be considered as binding at the bail stage; however, on an overall surveillance of the facts present before the Court, it does not seem to be a case to completely ignore this affidavit as the complainant has admitted that the present applicant was not the one who had committed the offence. When the other accused has been granted bail on the ground that no identification parade has so far been conducted; denying bail to the present accused under the given facts would not be justifiable.
- v) The prosecution has filed the FIR under section 396 as well; though this does not appear to be a case falling

within this provision. Moreover, the punishment under section 392 is not less than 3 years and not more than 10 years. It is settled law that while considering a bail application it is the lesser punishment which has to be considered, and on this count also, the applicants case does not fall within the prohibitory clause. Reliance in this regard may be placed on the cases reported as *Shehzore v The State (2006 YLR 3167)* and *Muhammad Akhtar v The State (1994 PCr.L.J 2340)*.

- vi) Finally, the co-accused with somewhat similar role assigned as that to the present applicant has been granted bail; hence, the rule of consistency shall also apply to the case of the present accused.

In view of hereinabove facts and circumstances of the case, there are sufficient grounds for further enquiry and the case of the applicant / accused falls within section 497(2) Cr. P.C.; consequently, the applicant / accused has made out a case for admission to bail and is accordingly admitted to bail on his furnishing surety in the sum of Rs. 50,000/- (Fifty Thousand Only) with P.R. bond in the like amount to the satisfaction of the Trial Court. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law.

**J U D G E**

Arshad/