

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No. 173 of 2020

APPLICANT : Samiullah s/o. Mehboob,
through Mr. Zulfiqar Ali Sheikh, Advocate.

RESPONDENT : The State,
through Mr. Fahim Hussain Panhwar, DPG.

Hearing on : 26.02.2020.

Decided on : 26.02.2020.

ORDER.

ABDUL MOBEEN LAKHO, J.- Being aggrieved and dissatisfied by the impugned order dated 04.02.2020 passed by learned IInd Additional District and Sessions Judge, Karachi West in case being crime No. 234/2019, under Section 395/452/34 P.P.C, registered at PS Maripur whereby the post arrest bail of the present applicant was dismissed, the applicant/ accused has approached this Court for seeking bail.

2. Briefly stated, the facts of the prosecution case as narrated in the FIR are that the complainant working at fish harbor and on 03.09.2019 he alongwith his family member were sleeping when at about 2:30 a.m 6/7 persons Pathan looking entered into his house holding TT pistol in their hands wearing shalwar kameez, illegally confined the complainant and his family in the room and started looting the house holds articles and after looting run away at about 0500 hours when the complainant checked the house and came to know that one TT pistol 30 bore No.1022981 Licensed, nine tola gold, cash amount of Rs.15000/-, one camera, ten mobile phones and 10 wrist watches were missing he went to police station for taking legal action and his claim is against the 6/7 unknown persons who looted the said article. Hence this FIR.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has committed no offence and have falsely been implicated in this case by the complainant; that the name of the applicant/accused is not mentioned in the FIR and neither any specific role attributed to the present applicant/accused in the FIR as such the case is doubtful; that police official with the collusion of complainant illegally confined the applicant/accused and demanded the illegal amount and upon refusal they have falsely involved the

present accused in this case. As such the applicant/accused is entitled for bail; that as per the contents of FIR the incident took place at about 02:30 a.m but complainant lodged the FIR at about 11:00 a.m without explaining the delay; that applicant/accused were not arrested from the place of incident and challan has already been submitted by the IO as such the accused is not needed for further investigation and applicant/accused is entitled for bail; that no recovery is effected from the applicant/accused hence, the case calls for further enquiry; that offence does not fall within the prohibitory clause of section 497 CR.P.C, as the minimum punishment of the offence is 04 years; that the applicant/accused is not hardened or not previously convicted in any case; that the applicant/accused is permanent resident of Karachi nor can he tamper with the prosecution witnesses; that the applicant is ready to furnish solvent surety to the entire satisfaction of this Hon'ble Court.

4. Learned DPG supported the order of the trial Court and stated that there are two other cases pending against him and recoveries have been made on the pointation of the accused. Hence the bail should be refused.

5. Heard arguments of learned counsel for the parties and perused the material available on record.

6. The incident took place on 03.09.2019 at about 02:30 a.m and the culprits allegedly left the place of incident at about 5:00 hours but complainant lodged an FIR at about 11:00 a.m usually people call 15 (Police Helpline) so the police can have the first look at the place of incident but here the complainant went to the police station after about 6 hours the delay of 5 hours is not explained that too when the police station is in the city.

7. So far arguments of learned DPG regarding registration of two other criminal cases against the applicant is concerned, it is established principle of law that until and unless guilt is proved, accused would be deemed to be innocent and mere registration of number of cases against the applicant, without conviction, is no ground for withholding grant of bail, especially when accused was not a previous convict. Reliance is placed on the case of Rahim alias Rahmat and another v. The State (1998 PCr.LJ 821).

8. Delay in lodging of FIR provides sufficient time for deliberation and consultation, for which the complainant had given no explanation, which makes the case of the applicant one of further inquiry. Admittedly, the applicant/accused has not been nominated in the FIR; during investigation, there is no direct evidence available with the complainant against the applicant. The evidentiary status of the alleged disclosure/recovery can be seen and determined by the trial Court after recording of evidence. The detention of the applicant/accused incarceration will not serve any useful purpose because the challan has been submitted in the trial Court is at initial stage and as such, in absence of any exceptional circumstances, grant of bail to an accused is a right, which should be given to the accused and refusal is an exception, as held by the Hon'ble Supreme Court of Pakistan in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488), Riaz Jafar Natiq v. Muhammad Nadeem Dar and others (2011 SCMR 1708) and Tariq Bashir and 5 others v. The State (PLD 1995 SC 34).

9. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the applicant if he will be found misusing the concession of bail.

10. These are the reasons of my short order dated 26.02.2020.

This Criminal Bail Application stands disposed of in the same terms.

J U D G E