

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 664 of 2020

<u>Date</u>	<u>Order with signature of Judge</u>
Heard on	: 19.05.2020
For Applicant	: Mr. Muhammad Ghaffar Khan, Advocate.
For State	: Ms. Rahat Ehsan, Addl.P.G. Sindh a/w ASIP/IO Mumtaz Ali, PS Sachal, Karachi.

Kausar Sultana Hussain, J:- Through instant Bail Application, applicant / accused Abdullah @ Shah Wali seeks his release on post arrest bail in case FIR No. 282 of 2020, registered at PS Sachal, Karachi under Section 392/34 PPC. The bail plea was raised by him before the learned trial Court but his request was turned down vide order dated 04.05.2020.

2. Concisely, the facts of the prosecution case as unfurled in the FIR lodged by first informant namely Muhammad Shabbir, who stated inter alia therein that on 05.04.2020 he alongwith his brother Muhammad Fahim after offering Fateha on the grave of their father was returning back in vehicle bearing registration No.BLC-139, at about 6.15 pm when they reached at main road opposite Ali Complex Scheme No.33, Karachi, four accused boarded on two motorcycles intercepted them and on the force of weapons they snatched mobile phone Samsung, wristwatch and wallet containing cash Rs. 15,000/-, ATM Card and CNIC from him and mobile phone Oppo and wallet containing cash Rs.4000/- and CNIC from his brother Fahim and as soon as they tried to run towards Superhighway, he hit one motorcycle, resultantly two accused fallen, one of them escaped away, while other one sustained injuries, who was apprehended with motorcycle, in the meanwhile police party headed by SIP Lutufullah of Police Station

Sachal reached at the spot, who took personal search of apprehended/injured accused and recovered one 30 bore pistol with loaded magazine containing 02 bullets from the right side fold of his shalwar and one empty wallet was also recovered from pocket of his shirt, police also seized motorcycle bearing registration No. LHE-3298, hence this FIR.

3. The main thrust of arguments of learned counsel for the applicant / accused is that the applicant / accused is working as garbage men in the same society i.e. Gulshan-e-Qaneez Fatima since long time on monthly basis, while the complainant's Estate Agency is also located, but due to the lockdown the applicant / accused is unable to collect the garbage from the houses, in the meanwhile the complainant given the work to applicant / accused to clean his office as well as the area, therefore, the applicant / accused clean the same but after that complainant refused to pay the amount which was decided, thereupon some hot words were exchanged by the applicant / accused with complainant then he called so many persons / companions, who badly beaten to the applicant / accused by kicks, punches and fists and given him serious injuries, after this just to save their skin the complainant managed this false case with the help of police and the alleged recovery has been foisted upon him. He next contended that alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C and in such matters grant of bail is a rule and refusal is an exception. He further contended that the challan has been submitted by the I.O before the concerned Magistrate and the physical presence of the applicant / accused is no more required for further investigation. He further contended that as per statement of the complainant, he was robbed in day light on main road where non-stop and public traffic is passing through and

robbery or theft is not possible, hence the matter requires further inquiry and he prayed for bail.

4. In contra, learned Addl.P.G for State unequivocally contended that it has become an order of the day that innocent citizens are being looted by the barbaric criminals, further stressed upon the crucial facts that practice of looting citizens has prevailed a sense of insecurity in the mind of general public, who are mindful to fly abroad for purpose of their live and their amenities too. She further contended that neither any place nor homes are secure from these kind of activists therefore, whenever, prosecution brought such like case before this Court, a duty also casts upon the criminal Court to take stern action and the person involved in such activities be dealt with strictly, therefore, bail plea may kindly be dismissed.

5. I have extensively heard the prime contention of learned counsel for applicant/accused, Addl.PG for State and have gone through the record made so available. Per contents of the FIR the applicant / accused was apprehended by the police at the spot just after commission of the offence of Robbery in presence of the complainant Muhammad Shabbir and his brother Muhammad Fahim. The arresting officer has prepared memo of arrest and recovery at the spot but it was signed by the complainant Muhammad Shabbir and his brother Muhammad Ali instead of Muhammad Fahim, while Muhammad Ali himself stated in his statement under Section 161 Cr.P.C that his brother / complainant has disclosed the entire story to him at home. Besides this in the FIR under discussion the complainant is Muhammad Shabbir while in column No.1 of the challan instead of Muhammad Shabbir his brother Muhammad Ali's name is mentioned as complainant. The I.O present before this Court could not clear his

position. There is nothing on record to show that the applicant / accused is a previous convict or has been arrested in a case of similar nature in past and the alleged offence falls within the prohibitory clause of section 497 Cr.P.C. Furthermore, it is admitted rule that bail cannot be withheld as a matter of punishment. There is no legal or moral compulsion to keep the people in jail merely on the allegation that they have committed the offence punishable with death, transportation of life or ten years unless reasonable ground appears to exist to disclose their complicity. The ultimate conviction and incarceration of guilty person can repair the wrong caused by a mistaken relief of bail granted to him but no satisfactory reparation / compensation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the longer run. In these circumstances, I am of opinion that matter requires further enquiry, hence I allow this bail application of the applicant / accused, subject to furnishing solvent surety of Rs. 30,000/- (Thirty Thousand only) with P.R. Bond in the like amount to the satisfaction of the learned trial Court.

6. Needless to mention here that observations, if any, made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant / accused on merits.

7. Above are the reasons of my short order dated **19.05.2020.**

J U D G E