

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr.Bail.Appl.No.S- 821 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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15.10.2020.

Mr. Bashir Ahmed Almani, Advocate for applicant.
Mr. Zulfiqar Ali Rajput, Assistant Attorney General.

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ORDER

ZULFIQAR AHMAD KHAN, J: Through this bail application, applicant Fateh Muhammad seeks his admission on post-arrest bail in Crime No.303/2019 registered at P.S Kazi Ahmed for offence u/s 379, 126 Railway Act.

2. The crux of the prosecution case is that complainant Ali Hassan who is gang man in Pakistan Railways reported theft of 24 plates of railway line admeasuring 100 ft, one of 12 ft, 15 joint plates and 100 joint bolts of P.S Kazi Ahmed on 16.12.2019 against unknown persons. Subsequently, his further statement was recorded wherein he nominated the present applicant and others and during investigation it is alleged that recovery was effected from them.

3. Learned counsel for the applicant submits that applicant is innocent and has falsely been involved in the case in hand; that there is delay of about 09 days in lodging the FIR and the FIR was lodged against 5-6 unknown persons; that this is unseen incident; lastly it is contended that the case against applicant requires further inquiry.

4. On the other hand, learned Assistant Attorney General appearing for the State opposed the bail application on the ground that applicant has been

involved on further statement of the complainant and that recovery has been affected from him.

5. I have heard the learned counsel for the parties and perused the material available on record with their kind assistance.

6. Admittedly, the incident as is evident from FIR is said to have taken place on 07/08.12.2019 whereas report thereof was lodged by complainant on 16.12.2019 after about 09 days delay and no plausible explanation has been furnished by prosecution for such an inordinate delay. The delay in criminal cases always held by Superior Courts to be fatal for prosecution case. Reference can be made from the case of Ayub Masih v. The State (PLD 2002 SC 1048) wherein Honourable Supreme Court has held as under:-

“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence. It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused.”

Moreover, the alleged offence is unseen, there is no direct / indirect evidence regarding the commission of offence whether the present applicant alongwith others was present at the time of offence and was seen by taking away the stolen property. All the witnesses are officials therefore, there is no question of tampering with prosecution evidence. It is also pointed out that applicant is in jail since last about 09 months without any progress in the trial though the earlier bail application filed on behalf of the applicant was dismissed with direction to the trial Court to expedite the trial and conclude the same within three (03) months. Apparently the trial Court has failed to

comply with such direction hence the instant bail application has been repeated.

7. In view of the above circumstances, the applicant/accused has made-out a case for further inquiry as contemplated under section 497(2), Cr.P.C. and he is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.15,000/- (Rupees fifteen thousand) and PR bond in the like amount to the satisfaction of learned trial Court.

The observations made herein above are tentative in nature and will not prejudice the case of either party at the time of trial.

JUDGE

Tufail