

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.681 of 2020

Applicant : Muhammad Ashraf (alias Lala) S/o
Allah Ditta
Through M/s. Waheed Kazi & Shafqat
Zaman, Advocates

Complainant : Atyab A. Tahir S/o Tahi Mehmood
Khan
Through Mr. Shoaib Ali Khatian

Respondent : The State
Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh

Date of hearing : 29.09.2020

Date of order : 29.09.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.692/2020 registered under Sections 392, 34 PPC of PS Darakshah, after his bail plea has been declined by learned VIIIth Addl. Sessions Judge, Karachi South vide order dated 21.01.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant argues that the applicant/accused is innocent and has falsely been implicated in this case by the police with the connivance of complainant due to malafide intention and ulterior motives; that no specific role is attributed to the present applicant/accused and as per FIR four persons entered into the house and robbed, while in the challan it is mentioned that three accused persons (i) Umair Saleem, (ii) Hadi Hussain Bangali and (iii) Mula Bangali entered into the bungalow after climbing up the wall and it is also mentioned

in the challan that accused Ashraf and Shahjahan remained outside the house for keep watching; that one accused Jamshed S/o Saiq Masih was granted bail by the trial Court; that the name of the applicant/accused is not mentioned in the FIR, however, on 27.11.2019 the present accused was arrested; that the Holiya/feature of the accused is not mentioned in the FIR, therefore application for identification parade is unlawful and illegal; that the detail of the theft gold articles is not mentioned in the FIR, hence recovery from the accused is doubtful; that the complainant is a powerful person having good relation with police department, the previous I.O. was not obeyed the illegal instruction of complainant hence he was suspended on the complaint of the complainant; that on 25.11.2019 at about 03.00 pm the police mobile picked up the accused near his residence hence the wife of accused moved an application to the Hon'ble Chief Justice of High Court of Sindh on 27.11.2019; that all the witnesses are police officials and the prosecution failed to associate a single respectable person as a prosecution witness, as such there is violation of section 103 Cr.P.C.; that the accused is in judicial custody, therefore, he is no more required for further inquiry. Lastly, he prays for post-arrest bail to the applicant/accused. In support of his contentions, learned counsel has relied upon the cases of (1) Javed Khan @ Bacha and another v. The State and another 2017 SCMR 524, (2) Muhammad Ayaz and others v. The State (2011 SCMR 769) and (3) Siraj-ul-Haq and another v. The State (2008 SCMR 302).

4. On the other hand, learned counsel for the complainant as well as learned DPG has opposed for grant of post-arrest bail on the ground that sufficient material is available on record to connect the applicant/accused with the commission of case. They further argue that the complainant has identified the present accused in the identification parade before the concerned Judicial Magistrate. They further argue that cash amount of Rs.50,000/- one tola gold, USA \$300 another \$300, one lady wrist watch branded and beauty

books were dacoited from the house of complainant and the ring was recovered from the applicant/accused.

5. I have heard the learned counsel for the parties and perused the material available on record. The case of the prosecution is that on the day of incident four unidentified persons entered into the house of complainant and committed robbery and snatched valuable articles including cash Rs.50,000/-, one tola gold ornament, US \$600, cuff codex, one branded lady watch and beauty box. During robbery, they received a phone call for which they replied and fled away but in the meantime mobile phone of one accused bearing SIM No. 0315-2831510 fell down. Further, after his arrest, the applicant/accused was produced before the learned Magistrate for his identification parade in which the complainant has identified him. The robbed articles were recovered from his pointation. Prima facie, sufficient material is available on record to connect with the commission of offence. Further, presently in Karachi, cases of such like nature are increasing day by day and in order to curb the situation, it is appropriate to take action against the culprits involving in such crimes.

6. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated

to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

7. Learned counsel for the applicant has failed to point out any ill-will, enmity or *mala fide* on the part of the Complainant or investigating officer to believe that he has been falsely implicated in this case. At the bail stage, only a tentative assessment is to be made and deeper appreciation is not permissible.

8. Because of the above, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application is **dismissed**. The case-laws cited by the learned counsel for the applicant are concerned; the same are not applicable in the instant case being on distinguishable facts.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

J U D G E

Kamran/PA