

THE HIGH COURT OF SINDH KARACHI

**Criminal Bail Application No. 1507 of 2019**

For hearing of Bail Application.

Applicant : Faheem-ud-Din through Mr. Kanwar  
Altaf Bhatti, Advocate.

Respondent : The State through Ms. Rubeena  
Qadir, Deputy Prosecutor General  
Sindh alongwith Complainant,  
Asif Hussain.

Date of hearing : 27-11-2019

Date of order : 27-11-2019

**ORDER**

**Adnan Iqbal Chaudhry J.-** On 03-09-2019, FIR No. 608/2019 was lodged at P.S. Surjani Town under sections 395/34 PPC in connection with the dacoity of a vehicle, a black Toyota Revo bearing registration No. KX-9469. The incident took place on the night of 31-08-2019 at about 21:00 hours. The Complainant of the FIR was the driver employed by the owner of the vehicle. Per the FIR, while the Complainant was on his way to pick up the family of the owner of the vehicle, he was intercepted by 06 persons riding a white Nissan and 02 motorcycles who were armed with pistols; who stopped the Toyota Revo, beat-up the Complainant, made him sit in the white Nissan while two of them took away the Toyota Revo; that the Complainant was blind-folded and driven around in the white Nissan for about one and half hour, and thereafter he was let-go; that the accused had also robbed the Complainant of his mobile phone, cash, CNIC and driving license. The FIR was lodged against 06 unknown persons.

2. The Applicant (Faheemuddin) and one co-accused, Muhammad Pervez, were arrested on 16-09-2019 at 03:00 hours. Per the charge-sheet, the Applicant, driving a black Toyota Revo, was

signaled to stop by the police at a snap-check but he sped away; that the said Toyota Revo was chased-down by the police mobile, but 03 persons sitting on the back seat of the vehicle managed to escape while the Applicant and the co-accused, Muhammad Pervez, who were in the front seats of the vehicle, were arrested; that both of them gave the police the names of the 03 fleeing accused; that on a search of the co-accused, Muhammad Pervez, a .30 bore pistol was recovered with 04 live rounds and he was booked under section 23(1)(a) of the Sindh Arms Act, 2013; that the Toyota Revo recovered from the accused carried a fake number plate and from its engine number and chassis number it was found to be the robbed vehicle of the instant case. The 03 fleeing accused and one other have yet to be arrested.

3. Per the statement of the Applicant (Faheemuddin) recorded during interrogation, he was a car trader and had a dispute with the Complainant over a financial transaction. Per the charge-sheet, the co-accused, Muhammad Pervez, had also lead the police to the place of the dacoity. Both the Applicant and the co-accused, Muhammad Pervez, were identified by the Complainant in an identification parade before the concerned Magistrate. The identification parade was held on 19-09-2019. On 20-09-2019, the Complainant gave a further statement at the P.S. that though both the said accused were amongst those who had committed the dacoity, he (Complainant) knows of the Applicant (Faheemuddin) as he had previously seen him with the owner of the vehicle in relation to a dispute between them.

4. On 22-11-2019, the Complainant filed an affidavit in this bail application stating that he had no objection to the grant of bail to the Applicant; that the Applicant and the owner of the vehicle have a business dispute; and that the Applicant had not committed dacoity.

5. Heard the learned counsel and perused the record. I advert first to the legal grounds raised by learned counsel for the Applicant.

Learned counsel for the Applicant submitted that since section 395 PPC also provided for a lesser punishment of 4 years in the alternate, then for the purposes of bail it is that lesser punishment which should be kept in mind, and for that proposition he cited the case of *Shehzore v. The State* (2006 YLR 3167). To grant bail in an offence alleged under section 395 PPC, the case of *Shehzore* had in turn relied on the case of *Arshad Mehmood v. The State* (1985 PCr.LJ 2048) where the provision under discussion was section 22(b) of the Emigration Ordinance, 1979 which provided for “imprisonment for a term which may extend to fourteen years, OR with fine or with both”. Since the word “or” could also mean that the sentence of fine was an alternative to the sentence of imprisonment, bail was granted in *Arshad Mehmood* while observing that it was debatable whether the sentence would fall with the prohibitory clause of section 497 Cr.P.C. On the other hand, section 395 PPC reads as under:

**“Punishment for dacoity.** Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years, and shall also be liable to fine.” (*underlining supplied for emphasis*).

In section 395 PPC, while the alternative to life imprisonment is rigorous punishment “which shall not be less than four years nor more than ten years”, that alternative punishment still provides for a maximum of 10 years, keeping the offence within the prohibitory clause of section 497 Cr.P.C. Thus, at the stage of bail when the Court looks at the alternate punishment provided under section 395 PPC, that is for the purposes of considering whether the case is one of further inquiry within the ambit of sub-section (2) of section 497 Cr.P.C., and it is not to say that the case does not fall within the prohibitory clause of section 497 Cr.P.C.

6. The other legal ground raised by the Applicant’s counsel that the recovery of the vehicle did not fulfill the requirements of section 103 Cr.P.C. by associating private witnesses from the locality, it is debatable, as has also been argued by the learned DPG, whether that

requirement of section 103 Cr.P.C. is applicable to the recovery of a vehicle from the road, and whether private witnesses could have been associated at an odd hour of the night. Therefore, I leave that question for examination by the trial Court lest the case of either side be prejudiced by any observation at the bail stage.

7. Coming now to the merits. Learned counsel for the Applicant laid great emphasis on the Complainant's subsequent statement as mentioned in the charge-sheet and the affidavit filed in this bail application of having known the Applicant (Faheemduddin) and submitted that such statement was sufficient to doubt the Complainant and to make the case one of further inquiry in that, when the Applicant was already known to the Complainant, he never nominated him in the FIR and then the identification parade too was of no significance. However, that in my view, does not take away from the allegation that the Applicant was arrested while driving the robbed vehicle with a fake number plate and with the co-accused carrying an unlicensed weapon; that he had tried to flee when signaled to stop by the police; that other persons accompanying the Applicant in the vehicle had fled; and that at the time of the identification parade, the Complainant had not stated that he knew the Applicant. In these circumstances, the above questions raised by learned counsel for the Applicant, and the one raised by the learned DPG that the Complainant's subsequent statement was probably due to pressure exerted by the accused party, though those require a deeper appreciation of the evidence not possible at the bail stage, those questions in light of the Applicant's situation, are not reasonable grounds for believing that the Applicant may not have committed the alleged offence. The affidavit of the Complainant that he has no objection to the grant bail to the Applicant is in my view of no value when admittedly the Complainant is not the owner of the robbed vehicle.

8. For the reasons aforesaid, the Applicant has not been able to bring his case within the ambit of sub-section (2) of section 497

Cr.P.C. therefore this bail application is dismissed. At this juncture, learned counsel for the Applicant prays for a direction to the trial Court to conclude the trial at the earliest as according to him proceedings under section 87 Cr.P.C. have already been taken against the absconding accused. Therefore, it is expected that the trial Court shall conclude the trial within three months.

Needless to state, that all observations herein are tentative and nothing herein shall be construed to prejudice the case of either side at trial. Bail application stands disposed of in the above terms.

**JUDGE**

Karachi  
Dated: 27-11-2019

\*SADAM/PA