

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH, KARACHI

**Criminal Bail Application No.1442 of 2021**

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*Date*

*Order with signature of Judge*

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*For hearing of Bail Application.*

**20.09.2021**

Mr. Ghulam Ali Abbasi, Advocate for the Applicant.

Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh along with P.I Abdul Majeed Abro of P.S Saddar, Karachi.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this bail application, applicant Noel @ Akash seeks his release on post arrest bail in Crime No.299 of 2021 of P.S Saddar, Karachi, under Section 392/397/34 PPC. The case, after thorough investigation, was challaned by the police on 04.06.2021, which is now pending for trial before the Court of 6<sup>th</sup> Additional Sessions Judge, Karachi (South) vide Sessions Case No.1517/2021 (re-the State Versus Noel @ Akash and others). The bail plea preferred by accused before trial Court was declined by means of order dated 27.05.2021, hence this application has been maintained.

The crux of the prosecution case as unfolded by the complainant in his FIR are that on 06.05.2021 at about 0130 hours he was going for some work and when at about 0010 hours he reached opposite Cantonment General Hospital, Iqbal Shaheed Road, Saddar, Karachi, two outlaws riding over white coloured 125 motorcycle emerged and on show of weapon intercepted him and snatched cash amount of Rs.3000/- then disappeared from the scene. Meanwhile, police mobile came to whom he (complainant) disclosed the facts of the incident whereupon police party chased the accused and apprehended both of them. Apprehended accused disclosed their names to be the present applicant as well as co-accused Muhammad Sameer son of Muhammad Saleem. On their personal search, police officer recovered one 9mm pistol along with magazine loaded with two live bullets, one mobile phone MOTO and Rs.3000/- cash allegedly snatched from the complainant from co-accused Muhammad Sameer, while they

recovered a 30 bore revolver along with two live bullets from the applicant. To such effect, present FIR was lodged.

The process issued against complainant, returned served, taken on record; however, no one is in attendance on his behalf.

Learned counsel for applicant submits that applicant being neighbourer has intimacy with co-accused Muhammad Sameer against whom the complainant has grudge over their friendship issues, therefore, applicant has been made victim of his friendship with co-accused. Next submits that applicant is a motor mechanic and the complainant always used to ask him for repair of his bike as well as exchange of its parts on free of cost, which the applicant refused. He further submits that no such incident as averred had occurred as the complainant called on phone to his father to send the applicant at police station for evidence and as and when he appeared before the police where the co-accused allegedly was in their custody, applicant was also booked in this crime by foisting alleged revolver. Learned advocate adds that neither the applicant was captured by police on spot nor he was available at scene of alleged offence. He further submits that nothing incriminating has been shown to have been recovered from his possession except weapon which according to him is foisted upon applicant only to strengthen rope of their false case. He further submits that the punishment provided by law for the sections applied in the FIR, does not exceed limits of prohibitory clause of section 497 Cr.P.C; hence, prays for his release on bail.

On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that he was apprehended by the police on spot along with offensive weapon; hence, he does not deserve any leniency in shape of his release on bail. She; however, admits that recovery of robbed amount has been shown to have effected from possession of co-accused.

**Heard arguments, record perused.** No doubt, the applicant has been shown to have been apprehended by the police on spot along with offensive weapon but the robbed amount has not been shown to have recovered from his possession. The alleged motorcycle which allegedly was driven by the

accused though was recovered by the police has not been made case property of instant case, even police have not mentioned it under FIR to whom it was belonging and whether has been recovered or otherwise. The punishment provided by the law for sections applied in the FIR carries two punishments and it is settled law that lessor quantum of sentences is to be considered at bail stage. The case has been challend by the police, therefore, applicant is no more required by them for the purpose of investigation or interrogation. Per report furnished by the trial Court, charge against accused was framed on 09.07.2021 in which Inspector Khalid Mehmood has been examined on 29.07.2021 whereas rest of the witnesses including complainant have not been appearing, therefore, case has not been concluded. It is settled law that one cannot be kept behind the Bars for indefinite period without progress in his trial and law cannot be stretched upon in favour of the prosecution particularly at bail stage. Moreover, the amount of robbery as shown is Rs.30,000/- only, which too has not been shown to have recovered from his possession; hence, under these circumstances, I am of the opinion that case against applicant requires further inquiry within the meaning of subsection 2 to section 49 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant Noel @ Akash son of Johnson, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It may be pertinent to mention here that the observation(s) made hereinabove is/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 is found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

**JUDGE**