

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.1539 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

20.09.2021

Mr. Kher Muhammad, Advocate for the Applicant.
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.
Complainant Imdad Hussain, present in person.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Ubaid seeks his release on post arrest bail in Crime No.1191 of 2021 of P.S Shah Latif Town, Karachi, under Section 395/397/34 PPC. The bail plea preferred by accused before trial Court was declined by means of order dated 19.07.2021, hence this application has been maintained.

The crux of the prosecution case as unfolded by the complainant in his FIR are that on 05.07.2021 at about 01:00 a.m, in the night behind Mateen Complex Sector B/19, Shah Latif Town, Karachi, complainant Imdad Hussain was intercepted by seven persons riding on four motorcycles and on show of weapons snatched Q-mobile phone set, cash Rs.1100/- colour copy of CNIC from the complainant and decamped towards Sector B/19, Shah Latif Town. In the meanwhile, police mobile van arrived at place of incident and police staff along with complainant chased the accused and apprehended three persons riding on two motorcycles. The apprehended persons disclosed their names as Ubaid son of Hussain from whom an unlicensed and without number pistol of 30 bore loaded with magazine containing three live bullets and touch screen Vivo mobile phone set were recovered. The other disclosed his name as Lal Muhammad son of Rahim Bux from whom an unlicensed and without number pistol of 30 bore loaded with magazine containing three live bullets and white colour Vigotel mobile phone set were recovered. The third accused disclosed his name as Rahib Ali son of Ismail from whom an unlicensed and without number pistol of 30 bore loaded with magazine containing three live bullets, Vigotel mobile phone set and Q-mobile phone, cash amount and coloured copy of CNIC of

complainant which were snatched from the complainant, were recovered. The apprehended accused disclosed names of escaped accused as Muhammad Saleh son of Deen Muhammad, Allah Dino son of Muhammad Nawaz, Naseer Solangi son of Hakeem and Tanveer son of Aewaz Ali. The motorcycle secured from possession of accused, bearing Engine No.C009304, Chassis No.859425, Honda 70 motorcycle was case property of FIR No.218/2021 of P.S Bin Qasim. The accused and case property were taken to police station where instant FIR was lodged.

At the very outset, learned counsel for the applicant submits that complainant of instant case namely Imdad Hussain has been examined before the trial Court on 11.09.2021 as PW-1/Exh.03, whereby he had not implicated any of the accused including applicant Ubaid. He further submits that due to exoneration, co-accused Lal Muhammad Rahib Ali have been granted post arrest bail by the trial Court on 17.09.2021. In support of his contention, he places on record true copies of deposition of the complainant as well as bail order of the co-accused under the cover of his statement dated 20.09.2021, same is hereby taken on record. He, therefore, submits that nothing has been brought on record against the applicant through which it could be deduced that he had committed any non-bailable offence. In support of his contention, he places reliance upon cases (i) *SAJID alias CHITTA Versus The STATE and others* (2016 SCMR 2089), (ii) *MUHAMMAD HAYAT and others Versus THE STATE* (1988 SCMR 747), (iii) *AKHTIAR AHMED and another Versus The STATE* (2018 P.Cr.L.J Note 2), (iv) *SAMEER HUSSAIN and others Versus The STATE* (2020 P.Cr.L.J Note 57).

Complainant Imdad Hussain, having CNIC# 43402-0385769-5 present in person, affirms the contention advanced by learned counsel for the applicant and submits that he has no objection for grant of bail on the ground that applicant is not real culprit of his offence.

Learned Addl. P.G, Sindh appearing for the State, in view of above factual position of record, does not oppose the bail application.

Heard arguments, record perused. No doubt, the applicant has been shown nominated in the FIR; however, complainant who himself is the victim of the crime, was examined before the trial Court on 11.09.2021 vide Exh.03, whereby he has not implicated any of the accused and he has totally

exonerated the applicant from commission of the offence. The co-accused on similar ground have been bailed out by the trial Court, therefore, propriety of law demands that applicant should also be extended constant treatment. In his deposition, the complainant had specifically deposed that applicant and co-accused are not real culprits of his offence and they had not committed robbery from him.

In the circumstances and in view of above factual position of record/evidence, I am of the considered view that case against applicant requires further inquiry within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant Ubaid son of Hussain, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.30,000/- (Rupees Thirty 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

Zulfiqar/P.A