

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.545 of 2020

<i>Date</i>	<i>Order with signature of Judge</i>
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For hearing of Bail Application.

18.08.2020

Mr. Shamsuddin Bhayo, Advocate along with Applicant (on bail).

Mr. Sagheer Ahmed Abbasi, Asst. Prosecutor General, Sindh along with SIP Riaz Ahmed of P.S Aram Bagh.

Mr. Asim Iqbal, Advocate for the complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Shahid Ahmed looks for his affirmation on pre-capture bail in Crime No. 158/2020 of Police Station Arambagh, Karachi, under Section 380/454 PPC. The bail supplication favored by the applicant before first discussion was declined by methods for request dated 10.04.2020, consequently this bail application. The case has been challaned by the police on 23.04.2020, which is currently pending for preliminary under the steady gaze of the Court of Civil Judge/Judicial Magistrare-VIII, Karachi (South) vide Criminal Case No.Nil (re-the State Versus Shahid Ahmed).

Realities of the indictment case are that on 15.03.2020 at around 1245 hours, complainant Abdul Majeed alongside his sister Mst. Kulsoom went to place of his senior sister Zaibun Nisa arranged at Dohrajee close Zubaida Hospital to take feast, in the wake of locking his level, and from that point, driver of his sister to be specific Shahid dropped them at around 1800 hours at Burns Road. The complainant further expressed that on return, when he alongside his sister came to at his level, he saw that somebody had misused the lock of the level. He opened the level and entered inside alongside his sister. The complainant further expressed that his sister saw that money measure of Rs.16,00,000/ - kept at head side of the bed was missing, along these lines, the complainant made enquiry from

neighbor Mst. Najma Ateeq, who educated him (complainant) that driver of his sister to be specific Shahid had come and he told that he was sent by Abdul Majeed to open the lock, in this way, the complainant had solid doubt that driver of his sister to be specific Shahid committing theft worth Rs.16,00,000/ - subsequently this FIR.

Learned counsel for the applicant presents that FIR is deferred for about a day and the separation among P.S and spot of event is just a single kilometer; in any case, no conceivable clarification has been outfitted by the indictment for such an exorbitant postponement. He next presents that however the applicant has been assigned in FIR; nonetheless, no specific charge with respect to taking claimed sum from head side of bed lying inside the level (flat) of complainant party is affirmed aside from insignificant his essence at outside entryway. He next calls attention to that sole onlooker of the episode is Mst. Najma Ateeq, who also had not seen the applicant while going into the level; in any case, just her proof is to the degree that she saw him while opening the level. He next presents that discipline gave by the law to Section 380 PPC is 3 years. Undoubtedly, whenever demonstrated by the indictment is 10 years. He further presents that applicant has joined trial proceedings and has not abused the concession reached out to him by this Court. He further presents that 161 Cr.P.C articulation of the observer viz. Mst. Najma Ateeq, is certifiably not a considerable bit of proof; be that as it may, it could be utilized with the end goal of logical inconsistencies. He at long last presents that however the applicant was seen by Mst. Najma Ateeq while opening the entry way however she didn't remove a solitary word in her 161 Cr.P.C explanation that she saw the applicant while entering in the level (flat) committing robbery of contested sum; consequently, as per learned counsel, utilization of Section 454 PPC is insignificant and is yet to be demonstrated by the indictment in the wake of recording proof of the gatherings. On the side of his conflict, he puts dependence upon the instances of *(i) ATTAULAH alias QASIM and another Versus THE STATE (2007 MLD 372)*, *(ii) ARSALAN MASHI and others Versus The STATE and others (2019 SCMR 1152)*, *(iii) AMIR BUX and another Versus THE STATE (1990 P.,Cr.L.J 1765)*, *(iv) ASLAM KHAN Versus QAISER KHAN and 2 others (1999 P.Cr.L.J 582)*, *(v) Muhammad Ishtiaque Versus The State (2010 SLJ 250)*.

Then again, learned Asst. Prosecutor General, Sindh showing up for the State, helped by counsel for the complainant contradicts the bail application and presents that applicant isn't just designated in the FIR yet was seen by neighbor Mst. Najma Ateeq at the hour of opening lock of the level of complainant, in this way, he isn't entitled for bail. Learned Asst. Prosecutor General, Sindh further presents that enormous sum kept by the complainant in their home/level has been removed by the applicant, in this way, he might be brought into care and remanded to prison with headings to confront the trial proceedings. He; in any case, couldn't oppose the way that whether complainant was an onlooker and any of the P.Ws including Mst. Najma Ateeq had saw the applicant while committing theft from abiding house.

Mr. Asim Iqbal, Advocate for the complainant likewise restricts the bail application and receives disputes of learned Asst. Prosecutor General, Sindh. He; in any case, has not put dependence upon any reference or the case law.

Heard contentions and scrutinized the record. Prior to continuing further, it will be fitting to experience the uncovered perusing of Sections 380 and 454 PPC, which read as under;_

“380. Theft in dwelling house, etc. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

“454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.”

Exposed perusing of the Sections applied in the FIR shows, the most extreme discipline gave by the law to these offenses is 3 years. To the extent, Section 454 PPC is concerned, it gives two disciplines. It is all around settled standard of law that on the off chance that sculpture conveys two punishments, at that point the punishment which is lesser one and is preferring to a blamed, ought to be considered at bail stage. Reference can be held from the cases (i) *REHMAN ULLAH Versus The STATE and another (2017 YLR 2458)*, (ii) *RAIS AHMED SIDDIQUI and others Versus The STATE (2017 YLR Note 325)*, (iii) *BABAR FAROOQ Versus The STATE (2017 YLR Note 313)* and (iv) *MUHAMMAD AKRAM Versus The STATE (2020 P.Cr.L.J 31)*.

Besides, the sole bit of proof, which is being guaranteed by the arraignment to be an onlooker is the announcement of Mst. Najma Ateeq, who has been inspected by the police/I.O under Section 161 Cr.P.C and her proof is yet to be recorded by the preliminary Court in the wake of surrounding of charge.

As far, conflict of learned counsel for the applicant that offense is concealed and sole onlooker viz. Mst. Najma Ateeq had purportedly observed the blamed while opening lock for the passage entryway of the level; in any case, had not indicated whether in the wake of opening lock of the passageway, he supposedly had entered inside the level and committed theft; and accordingly, no offense as far as Section 454 PPC was committed; is concerned, is the issue, which is yet to be controlled by the trial Court whether, from the proof accessible also should be cited by the arraignment at the hour of preliminary may comprise an offense as far as Section 454 PPC or something else. Consequently, dispute so progressed in the interest of the applicant requires further gratefulness, which isn't passable at bail stage.

It is additionally all around settled guideline of law that announcement under Section 161 Cr.P.C is anything but a meaningful bit of proof however it very well may be utilized for repudiating proclamation of witness. If there should be an occurrence of AMIR BUX and another (Supra), learned Bench of this Court while managing indistinguishable issue, has held in following terms;_

".....A statement under section 161 is not substantive piece of evidence but it can be used for contradicting the statement of a witness and test the degree of his authenticity. The statement under section 161 cannot be used to corroborate or for explaining any part of the prosecution evidence. It is merely for the purposes of contradicting the witness and no other purpose. Reference can be made to Haji Muhammad v. The State P L D 1966 Lah. 344. If a witness is contradicted by his statement under section 161, Cr.P.C. then it will reduce the evidentiary value of his testimony in Court....."

As a matter of fact, the case is being attempted by Judicial Magistrate, where in the wake of recording proof of the gatherings, in the event that indictment may prevail to demonstrate its argument against the applicant even, at that point discipline of beyond what 3 years can't be envisioned. In such a circumstance, bail turns out to be right of a blamed and refusal will be a special case. If there should be an occurrence of MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733), Honorable Supreme Court of Pakistan while managing indistinguishable circumstance as held as under;_

"6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

The end result of above conversation is that the applicant's case is simply secured by sub-segment 2 to Section 497 Cr.P.C, and requires further request. In like manner, moment Criminal Bail Application is thus permitted; interim bail granted to applicant on 15.04.2020 is therefore affirmed on same standing and conditions.

Applicant present under the watchful eye of the Court is coordinated to proceed with his appearance under the watchful eye of the trial Court without carelessness and in the event that he may abuse the concession or may temper with the indictment's proof then the trial Court is skillful to make lawful move against him too to his guarantee as far as Section 514 Cr.PC. Trial Court is likewise therefore coordinated to make vital game plans for making sure about participation of the indictment witnesses and finish up the preliminary inside most brief conceivable time under implication to this Court through MIT-II.

Leave duplicate of this Order alone conveyed to the trial Court through learned Sessions Judge, concerned, over fax, for consistence.

JUDGE

Zulfiqar/P.A