

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1924 of 2019
Criminal Bail Application No. 1856/2019

Date	Order with signature of Judge
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For hearing of Bail Application.

13.01.2020

Mr. Rawas Khan Afridi, Advocate a/w applicant in Criminal Bail Application No. 1924/2019.

Mr. Muhammad Rehan Qureshi, Advocate a/w applicant in Criminal Bail Application No. 1856/2019.

Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- By this common Order, I intend to dispose of these bail applications as both arise out of one and same crime and common question of law as well facts are involve in both Applications.

The case has been challaned by the police on 02.12.2019, which is pending for trial before the Court of VIIIth Civil Judge & Judicial Magistrate, Karachi (West) vide Criminal Case No. Nil/2019 (Re-The State Versus Nadia Bano and another), being outcome of FIR No. 555/2019 of P.S Saeedabad, under Section 380, 457, 34 PPC. The bail plea(s) raised by the applicants before the first forum, have been declined by means of orders both dated 04.12.2019; hence, they have approached this Court through these Applications.

Since the facts of the case are already mentioned in the FIR as well as impugned orders which are available in the files, therefore, there is no need to reproduce the same.

Heard learned counsel for the applicants as well as DPG appearing for the State.

Admittedly, the incident is unseen and entire case of the prosecution is based on hearsay evidence which is yet to be determined by the trial Court after recording evidence of the parties whether the applicants have rightly been arrayed or otherwise. Per memo of recovery dated 26.11.2019, learned D.P.G disclosed that some of the stolen files have been shown to have been recovered from co-accused Mst. Nadia and

Nasreen, both have been granted post arrest bail by the trial Court on 30.11.2019 and the bail pleas raised by the applicants before Additional Sessions Judge, Karachi (West) were declined by means of orders dated 30.11.2019 and 04.12.2019.

Since the stolen files have been shown to have been recovered from the possession of co-accused who have already been granted post arrest bail by the trial Court, therefore, case of applicants is at par to that of co-accused who have been bailed out. Objection raised by learned DPG carries no weight as if an accused deserves concession of post arrest bail then there is no legal bar or impediment to grant pre-arrest bail to him/them as by putting them in jail no legal or technical purpose will be served. If they may be committed to custody then they will again be entitled for post arrest bail on the rule of consistency as well on merits. Hence, propriety of law demands that constant treatment should be extended in their favour. Reliance can be placed upon the case of *MUHAMMAD RAMZAN Versus ZAFAR ULLAH (1986 SCMR 1380)*. Moreover, the case is being tried by the Judicial Magistrate where after recording of evidence if prosecution may succeed to establish its case against the applicants even then punishment of more than three years cannot be visualized, Therefore, offence is not covered by the prohibitory clause of Section 497 Cr.P.C. Reliance can be placed upon the case of *TARIQ BASHIR AND 5 OTHER Versus THE STATE (PLD 1995 SC 34)*.

In view of the above discussion, I am of the view that applicants have successfully made out a good prima facie case for their admission on pre-arrest bail in terms of Section 497(2) Cr.P.C. Consequently, both bail applications are allowed; interim bail granted earlier on 06.12.2019 & 19.12.2019 are hereby confirmed on the same terms and conditions.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to their surety(ies) in terms of Section 514 Cr.P.C. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Office is directed to place copy of this Order in connected bail application.

JUDGE