

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2284 of 2021

Noor Muhammad and 02 others

applicants through:

Mr. Mujeebuddin Qamar, advocate

The State,

through:

Mr. Zahoor Shah, DPG along with
SI/IO Niaz Muhammad AVLK, North
Nazimabad, Karachi

Date of hearing:

31.12.2021

ORDER

Adnan-ul-Karim Memon, J. The applicants Noor Muhammad, Abdul Qayyum, and Imran Khan are seeking admission on post-arrest bail in FIR No.732/2021 of PS Shahrah-e-Noorjehan, Karachi registered under Sections 397/34 PPC, *inter alia*, on the ground that they are innocent and have been falsely implicated by the police, though their names and description have not been depicted in the Subject FIR, registered at PS Shahrah-e-Noorjehan, Karachi; that nothing has been recovered from the possession of the applicants, as portrayed by the police by showing them arrested in another crime; and, allegedly recovered the subject motorcycle; that no identification parade has taken place to prove that the applicants had allegedly snatched the motorcycle from the complainant Wajahat Shaikh, who has not come forward at any stage to claim charge against the applicants, thus the entire story narrated by the prosecution is doubtful rather managed one just to book the applicants in the present crime, which even otherwise has not taken place.

2. Mr. Mujeebuddin Qamar, learned counsel for the applicants, has contended that no specific role has been assigned by the complainant in the alleged crime; that the alleged incident took place on 20.08.2021, however, the applicants have been shown arrested on 23.08.2021 after three days of the incident and they were having possession of such motorcycle for three days which creates doubt in the story of prosecution; that no independent witness has been cited, who might have seen the alleged snatching of motorcycle from the complainant; even the complainant did not bother to come forward to identify the applicants, before the concerned Magistrate as per Investigating Officer's report; that no offense under Section 397 and 412 PPC has been made out against the applicants, thus they cannot be kept behind the bar for indefinite period, therefore, the applicants are entitled to concession of the post-arrest bail in the aforesaid crime; that there is no previous criminal record of the applicants to draw adverse inference against them. He prayed for allowing the instant bail application.

3. Investigating officer present in Court has submitted that no identification parade could take place despite his best efforts; that the applicants were booked in another crime; and, thereafter they admitted their guilt of snatching the motorcycle, which was later on recovered and handed over to the complainant.

4. Learned DPG has supported the prosecution case on the premise that recovered motorcycle was snatched/robbed property confirmed by CPLC vide memo of arrest and recovery dated 23.08.2021; that no ill will or enmity of complainant/police came on record that motorcycle was foisted on applicant/accused; that Section 412 PPC also applies on the case of applicants for which maximum punishment of 10 years has been provided which falls in the prohibitory clause of Section 497(2) Cr.P.C. He prayed for the dismissal of the instant bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Tentative assessment of record reflects that the names of the applicants are not transpiring in the FIR; that in the present case the complainant has mentioned that he has seen the applicants, however, he was called by the Investigating Officer to identify the applicants, who were arrested in another crime, but he was not bothered to come forward to identify them before the concerned Magistrate; that no identification parade took place and it is yet to be proved that whether the applicants are the actual culprits of snatching of alleged motorcycle or otherwise, which is the prime function of the learned trial Court to separate the grain from the chaff at the time of recording of evidence. The investigating officer also submits that there is no previous criminal record of the applicants.

7. So far as the recovery of the motorcycle is concerned, it is yet to be confronted to the applicants through the complainant at the time of recording of the evidence, therefore, at this stage, the tentative assessment of record shows that the applicants are yet to be identified and at the bail stage, the bail cannot be withheld as punishment by adversely inferring against them or otherwise. In such a scenario, the case of the applicants falls within the ambit of 497(2) Cr.P.C. as such the applicants are entitled to concession of the post-arrest bail in the said crime.

8. The observation made hereinabove is tentative shall not prejudice either party at the trial.

9. These are the reasons for my short order dated 31.12.2021 whereby this bail application was allowed and the applicants were admitted to post-arrest bail in FIR No.732/2021 of PS Shahrah-e-Noorjehan, Karachi registered under Sections 397/34/412 PPC subject to their furnishing solvent surety in the sum of Rs.100,000/-

(Rupees One hundred thousand only) each and PR bond in the like amount to the satisfaction of the Trial Court. The trial Court is directed to conclude the trial within two months from the date of receipt of this order and submit a compliance report through MIT-II of this Court.

JUDGE

Zahid/*