

**IN THE HIGH COURT OF SINDH CIRCUIT
COURT HYDERABAD**

Criminal Bail Application No.S-715 of 2021
Criminal Bail Application No.S-726 of 2021

Applicants : Mushtaque Ahmed in Criminal Bail Application No. S-715 of 2021 and Irfan Ali in Criminal Bail Application No. S-726 of 2021, through Mr. Muhammad Hashim Laghari, Advocate.

Complainant : Riaz Ali Khan through Syed Shafique Ahmed Shah, Advocate.

The State : Through Ms. Rameshan Oad, A.P.G, Sindh.

Date of hearing : 08.10.2021.
Date of order : 08.10.2021.

ORDER

KHADIM HUSSAIN TUNIO, J:- By this common order, I intend to dispose of the above captioned criminal bail applications filed by applicants Mushtaque Ahmed and Irfan Ali as the same are the outcome of one and same FIR bearing No. 82 of 2021 registered with Police Station Saeedabad for the offences punishable u/s 397 and 504 PPC.

2. The allegations, in nutshell, against the applicants are that on 03.08.2021, the complainant was available with his nephew Shahid Ali at weighing scale of Syed Allahdino Shah situated in Chachri Shakh where present applicants along-with other unknown culprits duly armed with repeaters & pistol came in two vehicles and on the show of force of weapons, applicant Irfan Ali snatched cash amount of Rs.20,000/- from aforesaid PW Shahid Ali and Rs.7,000/- from the complainant, for which present F.I.R was registered.

3. Learned counsel for the applicants argued that there is an old enmity between the parties and counter F.I.Rs are registered against each other; that F.I.R was delayed for about 16 hours without any plausible explanation; that complainant has recorded no objection to confirmation and grant of bail to the applicants as parties have patched outside the Court and settled their dispute; that there is no apprehension of tampering with the prosecution evidence; that the

applicants did not cause any injury to anyone; that the allegations leveled against the applicants are general in nature. He lastly prayed for confirmation of interim pre-arrest bail and the grant of post-arrest bail to the applicants.

4. Learned Assistant Prosecutor General, Sindh opposing the confirmation and grant of bail to the applicants argued that the applicants have been named in the FIR with specific role while counsel for complainant has recorded no objection.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. Admittedly, there is unexplained delay of 16 hours in lodging the F.I.R, which has not been plausibly explained by the complainant. The complainant did not disclose the denomination of currency notes in F.I.R. The applicants allegedly were carrying weapons at the time of incident but they did not use the same for committing the offence. Counsel for complainant has recorded no objection for confirmation as well as grant of bail to the applicants. Enmity also exists between the parties which is a double edged sword, and litigation in this regard is also pending. The applicants are no more required for further investigation, as the case has already been challaned, therefore, in my view the case of present applicants` calls for further inquiry. The Hon`ble Apex Court, in the case of *Muhammad Tanveer v. the State & another (PLD 2017 Supreme Court 733)*, has been pleased to observe 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."

7. Moreover, the recent case before the Hon`ble Apex Court in **Criminal Petition No. 529 of 2021** dated 14.07.2021 titled

Iftikhar Ahmad v. The State reiterated the long standing principle that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception. The learned counsel for the complainant and the learned A.P.G could not show this Court any such circumstance or conduct of the applicants that would bring their case under exception to the rule of granting bail in such offences.

8. For the foregoing reasons, I am of the opinion that the applicants have succeeded to make out their case for confirmation and grant of post arrest bail, therefore, the pre-arrest bail of applicant Mushtaque Ahmed was confirmed on same terms and conditions while applicant Irfan Ali was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of learned trial Court by two separate short order dated 08.10.2021 and these are reasons for the same.

9. Needless to mention here that the observations made hereinabove are tentative in nature and will not prejudice the case of either party at the time of trial.

JUDGE