

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Cr. Bail Appln: No.S-864 of 2018.
Cr. Bail Appln: No.S-915 of 2018.

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on office objection.
For hearing of main case.

25.01.2019.

Mr. Altaf Sachal Awan, Advocate for the applicants
in Cr.B.A. No.S-86 4/2018.

Mr. Taj Muhammad Keerio, Advocate for the applicant
in Cr. B.A No.S-915/18.

Mr. Muhammad Ali Rind, Advocate for the complainant.

Mr. Shahzado Saleem Nahiyoon, D.P.G for the State
alongwith I.O/SIP Dileejan.

ORDER.

KHADIM HUSSAIN TUNIO, J.- By this common order, I intend to dispose of above captioned bail applications filed on behalf of applicants named above for their admission on post arrest bail in Crime No. 180 of 2018, registered at Police Station, Qasimabad, Hyderabad for offences under sections 395 and 215, PPC. Earlier the applicants approached the learned trial Court for grant of bail, but the same has been declined by the learned IIIrd. Additional Sessions Judge, Hyderabad vide orders dated 12.09.2018 and 02.10.2018 respectively.

2. It is alleged that the applicants alongwith rest committed the dacoity and robbed articles from the complainant party, as detailed in the F.I.R, for which, instant F.I.R. was lodged.

3. Learned counsel for the applicants have argued that there is unexplained delay of 54 days in lodging the F.I.R; that no specific role is attributed to the applicants/accused; that the name of applicant/accused Abdul Ghaffar was disclosed by the co-accused/applicant Laiq before the complainant party at his village; that number of currency notes towards an amount of Rs.200,000/- alleged to have been paid by the complainant to the applicant/accused was not disclosed in the F.I.R.; that the alleged recovery of walled, Photostat copy of CNIC, watch

and Photostat copy of arm license from the accused/applicant Laiq at the time of arrest; that the offence with which the applicants are charged is punishable upto ten years, but lesser punishment is to be considered. In support of their contentions, learned counsel for the applicants referred to the cases *2018 YLR 110, PLD 2017 SC 733, 2003 SCMR 201 and 2006 YLR 3167*.

4. Conversely, learned D.P.G. has vehemently opposed the grant of bail by stating that the applicants are nominated in the F.I.R. with specific role and that the recovery has been made from the applicant/accused Laiq and he has made admission before the complainant regarding the alleged offence and disclosed the name of his companion; that the applicant Laiq has received an amount of Rs.200,000/- from the complainant with promise to return all the robbed property; that the delay in lodging of the F.I.R has been explained. Learned counsel for the complainant has argued while adopting the contention mentioned in the impugned order at page-31.

5. I have given due consideration to the arguments of learned counsel for the parties and have perused the record carefully.

6. Admittedly, there is unexplained delay of 54 days in lodging the F.I.R, which has not been plausibly explained by the complainant. Surprisingly, the F.I.R. has been lodged by the complainant after knowing the names of the assailants through police; that no specific date, time and designation of the police officer, who has informed the complainant about the names of the culprits regarding the alleged dacoity are mentioned; that the complainant has not disclosed the number of denominations of currency of Rs.200,000/- paid to the applicant Laiq at his village for return of robbed property; that the PWs are interested and related and no PW from the vicinity has been cited in the case, though the arrest of the applicants/accused alleged to have been shown from the Pakora stop Qasimabad, Hyderabad, which is situated in thickly populated area of Hyderabad City. 8. The applicants are in custody and 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. It is settled law that in case of an offence punishable under section 395, PPC, the lesser punishment would be considered at bail stage. In this respect, learned Counsel has rightly relied upon the case of *Shehzore and another v. the State* reported as *2006 YLR 3167*, in which it has been observed as under:-

“Section 395 P.P.C provides that; whoever commits dacoity shall be punished with imprisonment for life, on rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to fine. The sentence not less than four years was incorporated by Ordinance-III of 1980 on 3rd February, 1980, which make the intention of the legislature very clear that when the case is registered under section 395, P.P.C, the court cannot award sentence less than four years and can award sentence not more than ten years. respectfully following the principle laid down in the case of Arshad Mehmood (Supra) and Muhammad Akhtar (supra) the applicants are admitted to bail subject to his furnishing surety in the sum of Rs.50,000/- and P.R bond in the like amount, each to the satisfaction of trial court. however, the learned trial court is directed to expedite the proceedings and dispose of the matter as early as possible.”

7. Reliance has also been placed upon the case of ***Muhammad Tanveer v. the State & another (PLD 2017 Supreme Court 733)***, wherein it has been observed 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.”

8. For the foregoing reasons, I am of the opinion that the applicants have succeeded to make out a case for post arrest bail, therefore, the applicants are admitted to bail subject to their furnishing solvent surety in the sum of Rs. 200,000/- (Rupees two hundred thousands) each and P.R bonds in the like amount, to the satisfaction of learned trial Court.

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.

These bail applications are disposed of.

JUDGE

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