

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**

**Cr. Bail Application No. 595 of 2021**

Applicant: Mushtaq Ahmed son of Irshad Ali Qaimkhani.  
 Through Mr. Asad Ali, Advocate.

Respondent: The State, through Ms. Amna Ansari,  
 Additional Prosecutor General Sindh  
 a/w SI Zulfiqar Ali PS Defence  
 & ASI Saleem Akhtar, CRO Branch

Date of Hg: 04.05.2021

Date of order: 04.05.2021

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**Arshad Hussain Khan, J:-** The applicant/accused seeks post-arrest bail in F.I.R. No. 106 of 2021, registered at PS Defence, Karachi, under Section 392/397/34 P.P.C.

2. Briefly stated the facts as per the F.I.R. are that on 05.02.2021 at about 1605 hours when the complainant, an employee of Mushtaq Bakery, Mehmoodabad, Karachi, reached in front of Agha Jee Hotel suddenly four (4) persons on two motorcycles came towards him and on the gun point they snatched one Q-Mobile button wala, cash of Rs.500 and one Mobile Tecno Model-KD7 IMEI No. 35419114435218-354190114435200, however, when culprits were escaping, the complainant made hue and cry upon which one police mobile, patrolling in the area, headed by ASI Shoukat Hayat, reached there, he told entire story to the ASI. Thereafter, the complainant along with police party chased the accused persons and asked them to stop, however, three of them ran away while one was apprehended by the police. On inquiry, he disclosed his name as Mushtaq Ali son of Shad Ali. Upon further inquiry, he disclosed the names of his companion as Abrar, Tariq and unknown. From his personal search a pistol of 30-bore with loaded magazine of 5 rounds were recovered from his possession. He failed to produce license of the pistol. On further search, snatched mobile Tecno Model KD7 IMEI No. 35419114435218-354190114435200 was also recovered and taken into police custody and one CNIC of applicant/accused, cash amount of Rs.110/- while Q-mobile of the complainant (with buttons) was taken away by the accomplices who fled away. Police also inquired about the documents

of black colour Unique 70 motorcycle No.KTE-9388 from the bandit, which was also taken into police custody. Police officer wrote the incident at the spot on which the complainant put his signature. Thereafter, he along with police and accused/applicant reached at the police station, where he lodged the FIR.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has falsely been implicated by the complainant in this case as he has not committed any crime. However, it was a street fight due to which the complainant in collusion with the police registered the FIR against the applicant/accused. Further argued that the applicant/accused is not known by the other accused mentioned in the other FIR. Next argued that as per the statement of the complainant his wallet was snatched by the accused persons having only Rs.500/- but at the spot those 500 rupees and wallet of complainant were not recovered from applicant/accused, hence there is no recovery made from him at the spot. He further argued that the applicant/accused is an employee in Pakistan Navy and he has no previous criminal record, hence the case of the applicant/accused requires further inquiry. He lastly prayed that applicant/accused may be admitted to bail.

4. Learned Addl.P.G. for the State vehemently opposed the bail application on the grounds that the applicant/accused has been arrested at the spot, recovery has also been affected from his possession, therefore, applicant/accused has been assigned role in the commission of offence. She lastly prayed for dismissal of the bail application.

5. I have considered the arguments advanced by learned counsel for the applicant/accused and learned Addl. PG as well as perused the material available on the record.

6. The record shows that the applicant/accused is not previous convict nor hardened criminal. Moreover, the applicant/accused has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled

that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offence. The case does not fall within the prohibitory clause, thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of grant of bail must favorably be considered and should only be declined in exceptional cases. In the instant case, no exception has been pointed out by the prosecution specially in the circumstances when applicant/ accused is first offender and nothing contrary to the same has been produced, thus I do not find this to be a case where it should be refused as an exception and for this reason, the applicants/accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.1,50,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court, by my short order dated 04.5.2021.

7. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

Above are the reasons of my short order dated 04.05.2021

Judge

*Tahir\*\*\**