

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

**Cr. Bail Application No. 645 of 2021**

Applicant: Shahid Ahmed Qureshi S/o Zafar Ahmed Qureshi.  
Through Mr.Maula Bux Bhutto, Advocate.

The State: Through Ms. Amna Ansari,  
Additional Prosecutor General Sindh.

-----

Date of hearing: 04.05.2021

Date of order: 04.05.2021

**Arshad Hussain Khan, J:-** The above named applicant / accused, through above bail application has sought post-arrest bail in the case bearing F.I.R. No.188/2016, registered under Section 395/337-A(i)/34 PPC at P.S. Eidgah, Karachi.

2. Briefly stated the facts of the F.I.R. are that the complainant Muhammad Usman lodged the FIR on 18.10.2016 stating therein that he is the branch manager of a local bank, while he was on duty three young boys came to the bank and were followed by two other boys. They pushed their way past the security guard at the door and then whipped out pistol. Another security guard who tried to intervene was hit on the head with a pistol butt. They, then beat the two cashiers and took Rs.5,40,000/-. They also took the mobile phone of a lady employee, hence this FIR.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and he has falsely been implicated in the case by the police with mala fide intentions and ulterior motives, best known to them. He further argued that nothing has been recovered from the possession of applicant/accused; nor he has been arrested from the spot. He further contended that no role attributed to applicant/accused in the commission of offence and the case of prosecution is totally silent with respect of giving any description [hullia] of any culprit given by any eye witness in the case. Next contended that applicant/accused was re-arrested in this case when he was already under arrest in another case viz: FIR No. 127/2017, u/s 392 PPC, P.S. Khawaja Ajmair Nagri; and in the same Sessions Case No. 1137/2017 applicant/accused has been acquitted u/s 265-H(i) Cr.P.C. by IInd-Additional Sessions Judge, [Central] Karachi on 09.02.2021 and no appeal has been filed against said acquittal. He

further argued that on the basis of extra judicial confession the applicant/accused has been arrested, which is sheer violation of article 38/39 of the Qanoon-e-Shahadat Order,1984. He next argued that the identification parade was held after about 8 months, which creates doubt in the prosecution case. Learned counsel further argued that applicant/accused is behind the bar since 29.05.2017 approximately 4 years without any fault. The applicant also seeks bail specially on the ground of statutory delay, which never been made on the part of applicant/accused nor the trial has been concluded yet. He further contended that the applicant/accused had filed his bail application No. 67/2020 but the same was dismissed with the directions to the trial court to conclude the trial within two months by/till 16.05.2020, despite completion of directions no case was concluded nor applicant was released on bail. It is also contended that co-accused namely; Wajid @ Mama has been granted bail vide B.A. No.1676/2021 on 15.02.2021 from this Hon'ble Court, hence applicant/accused is entitled for concession of bail on the rule of consistency. In support of his contention, he has relied upon the cases of Muhammad Riaz v. The State [2016 P.Cr.L.J 1206 Sindh], Dr. Asim Hussain and others v. The State [2017 P.Cr.L.J. 631 Sindh], Sartaj Ali alias Maru [2019 P.Cr.L.J Note-76 Sindh], Sher Ali alias Sheri v. The State [1998 SCMR 190], Adnan Prince v. The State through P.G. Punjab and another [PLD 2017 S.C. 147], Pir Bakhsh v. The State and others [2010 MLD 220], Mitho Pitafi v. The State [2009 SCMR 229] and Jamal-ud-Din alias Zbair Khan v. The State [2012 SCMR 573].

4. Learned Addl.P.G. for the State while opposing the bail application submits that applicant/accused has criminal history as he is involved in the crime of identical nature and as such he is not entitled to concession of the bail.

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

6. From perusal of the record, it appears that the applicant had earlier also filed bail application before this Court, which was dismissed with the directions to trial court to conclude the trial expeditiously, preferably, within two months' time under compliance report to this Court through MIT-II. Record further shows that the trial

despite lapse of approximately four (4) years has not yet been concluded. The applicant is behind the bar since his arrest, i.e. 29.05.2017. However, access to justice has been recognized as a fundamental right. In this regard, reference may also be made to the cases of *Sharaf Faridi v. Federation of Pakistan* (PLD 1989 Karachi 404), *Government of Balochistan v. Azizullah Memon and others* (PLD 1993 SC 341), *Al-Jehad Trust v. Federation of Pakistan and others* (PLD 1996 SC 324), *Mehram Ali and others v. Federation of Pakistan and others* (PLD 1998 SC 1445) and *Shaikh Liaqat Hussain v. Federation of Pakistan* (PLD 1999 SC 504). It is right of every accused to stand trial within a reasonable time. It is proverbial that justice delayed is justice denied. Delay in trial, particularly when it amounts to abuse of process of law or of court, has always been recognized as a ground for the grant of bail, before its incorporation in statute in the shape of third and fourth provisos to subsection (1) of section 497 of the Code of Criminal Procedure, 1898, as well as after their repeal. Its incorporation in the statute had the effect of simply regulating Court's discretion. Thus, in my opinion, inordinate delay in trial, which in the present case is 4 years, is not only abuse of the process of law and of court, but violation of fundamental right of access to justice as well. It must be remedied without any further loss of time. The instant remedy in the present case will be to release the applicant on bail immediately, which cannot be denied to him on any ground. The Honourable Supreme Court in the case of *Adnan Prince v. The State through P.G. Punjab and another* [PLD 2017 S.C. 147], while dealing with the identical issue has observed as under:

“14. The inordinate and shocking delay in the conclusion of trial in this case has made out a case for grant of bail which cannot be refused to the petitioner on any ground much less justifiable.”

7. Besides above, records also reflect that co-accused namely; *Wajid @ Mama* has been granted post-arrest bail by this Court. In criminal cases rule of consistency applies when the accused has identical role with the co-accused then he is entitled for the same relief, which was granted to the co-accused. In the case in hand, co-accused *Wajid @ Mama* having similar role was released on bail by this Court, vide order dated 10.03.2021. As the case of the present applicant/accused is at par with the co-accused, *Wajid*

released on bail, therefore, he is also entitled for the same treatment as per rule of consistency. Reliance can be placed on case titled as Pir Bakhsh v. The State and others [2010 MLD 220], wherein it is held as under:-

“6. Rule of consistency is always taken into consideration by the Courts since long because a person cannot be denied for the grant of bail whose case is at par of an accused who had already been released on bail.

The Courts have to give equal treatment to the accused persons having one and the same role in the same case. Reliance upon the cases of Muhammad Fazal alias Bodi v. The State (1979 SCMR 9), Khadim Hussain v. The State (1983 SCMR 124), Manzoor Ahmad and others v. The State (PLJ 1999 Cr.C. (Lahore) 570) and Muhammad Daud and another v. The State and another (2008 SCMR 173). As the case of the petitioner is at par with that of his co-accused Zulifqar and Ghulam Rasool who had already been allowed bail by the learned Additional Sessions Judge, therefore, following the rule of consistency, the petitioner is also entitled to the bail.”

8. As regards the contention of learned Addl. PG that the applicant is involved in other criminal cases, it would suffice that mere involvement in other cases would not disentitle him from the relief of bail if he otherwise succeeds in bringing his case within meaning of further inquiry. Further, learned DPG has not brought on record any material that applicant has been convicted in any case, hence, mere involvement in criminal cases could not be a ground to withhold the concession of bail in the given circumstances. Moreover, learned counsel for the applicant through a statement has placed on record the orders/judgment reflecting that the applicant has been acquitted in the previous cases. Reliance in this regard may be placed upon the cases of Moundar and others v. The State [PLD 1990 SC 934] and Muhammad Rafique v. The State [1997 SCMR 412].

9. The applicant/accused is neither previously convicted 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. From the tentative assessment of the evidence in the hand of

prosecution, it appears that there is hearsay evidence against the present applicant/accused, while it is yet to be determined whether they are involved or not, which is possible only after recording of the evidence by the trial Court.

10. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicants/accused has established his case for grant of bail and as such he is entitled to bail and for this reason, the applicant/accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- by my short order dated 04.5.2021.

11. 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 applicants/accused without making any reference to this Court.

Above are the reasons of my short order dated 04.05.2021

Judge

*Tahir\*\*\**