Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 466 of 2021

Applicants:	1.Waseem @ Comando S/o Ishratullah. 2. Syed Javed Shafique, S/o Shafi-ur-Rehman 3. Ameen S/o Aziz Ahmed Through Mr. Maula Bux Bhutto, Advocate.
	Vs.
The State:	Through Ms. Amna Ansari, Additional Prosecutor General Sindh, a/w SIP Muhammad Arif, PS Shahra-e-Faisal.
Date of Hg:	04.05.2021
Date of order:	04.05.2021

Arshad Hussain Khan, J:- The above named applicants / accused, through instant bail application have sought post-arrest bail in the case bearing F.I.R. No.57/2021, registered under Section 395 PPC at P.S. Shahrah-e-Faisal, Karachi.

2. Briefly stated the facts of the F.I.R. are that the complainant on 22.01.2021 was present at his home at about 02.00 a.m. (night) when upon ringing the bell of his house, he opened the door and found that two Honda Civic Cars [white and sky blue colour] were standing in front of his house wherein 6/7 persons were boarded. They were armed with weapon and they forcibly entered into his house, and after robbing Rs.2,50,000/-, one gold set of 03 tolas, 07 Cameras, 05 wrist watches used mobile phones, Lenovo Laptop, artificial jewelry bangles etc. on gunpoint, and at about 0213 a.m. they fled away. Hence, he lodged the FIR against 6/7 unknown persons.

3. Learned counsel for the applicants/accused has argued that the applicants/accused are innocent and have falsely been implicated in the case by the police officials with malafide intentions. He further argued

that the FIR is registered against unknown persons; moreover there is neither the name of any culprit in the FIR nor single description of any dacoit / culprit was given by the eye witness in the FIR, or in 161 Cr.P.C. statement regarding colour, race, height, age or face sketches etc., which one could identify real culprits. He further contended that identification parade is very much important in such like cases where eye witness claims to identify the real culprits but surprisingly neither any identification parade has been conducted nor Investigating Officer bothered to take a single step for conducting the same. He next contended that nothing has been recovered from the possession of the applicants/accused but is foisted upon them. Learned counsel further urged that the alleged articles mentioned by the complainant in the FIR are highly doubtful as from the date of FIR till the completion of Investigation, the complainant could neither have provided any single proof of the ownership of the said articles nor any independent evidence has been provided in this respect. Such fact leads the case towards further inquiry under Section 497(2) Cr.P.C. Even otherwise, the alleged recovered articles have never been sealed on the spot to save the sanctity and genuineness of the same; hence such recovery cannot be relied upon. He next argued that applicants/accused were taken away from their houses on 19.01.2021 by the police and had kept at unknown place meanwhile their family members moved applications to the high ups of the police through TCS for their safe recovery but police malafidely shown their false arrest in different cases of arms and dacoity on 22.01.2021 and they have been granted bail in the said arms and ammunition cases on 05.03.2021. He also contended that during illegal custody of applicants/accused, they were also booked in another case of Crime No. 44/2021 of P.S. Gulistan-e-Johar; later in the same crime they have also been granted bail on 19.02.2021. He lastly argued that co-accused namely; Atiq son Fahimullah and Muhammad Sajid nominated in the crime have already been granted bail and as such keeping in view the rule of consistency the present applicants/accused are also entitled for concession of bail. Learned Counsel in support of his stance has relied upon the cases of *Pir Bakhsh v. The State and another* [2010 MLD 220], *Mitho Pitafi v. The State* [2009 SCMR 299], *Jamal-ud-din alias Zubair Khan v. The State* [2012 SCMR 573], *Muhammad Rafique v. The State* [1997 SCMR 412], *Khawar Ali v. The*

State and others [2014 MLD 124], *Tarique and 3 others v. The State* [2018 MLD 745] and *Muhammad Ishaque v. The State* [2019 YLR 677].

4. Learned Addl.P.G. for the State while vehemently opposing the bail application has submitted that the applicants are not entitled for concession of bail. Notice of this bail application has also been issued to the complainant but there is no representation on his behalf.

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

6. From perusal of the FIR, it appears that it has been lodged against the unknown accused persons who committed dacoity in the house of the complainant and took way cash, gold ornaments wrist watches, laptop and mobile phones etc., on the force of weapon, however, there is no description of the accused persons mentioned in the FIR. Record does not show that any implicating material evidence has been recovered from the applicants/accused. From the record, it transpires that the applicants/accused were got involved in the case upon their statement in police custody in another case. The Hon'ble Supreme Court in the case *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of statement made before the police in the light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements recorded by police during investigation are inadmissible in the evidence and cannot be relied upon.

7. In the present case, though the FIR was against the unknown persons yet upon arrest of the present applicants/accused no test-identification parade has been held, despite the fact that the complainant mentioned in the FIR that he and other inmates of his house can identify the accused if brought before them. It is well settled that in cases where the names of culprits are not mentioned, holding of test-identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State*

[1997 SCMR 971], wherein the Honourable Supreme Court of Pakistan, inter alia, has held :-

> "7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits….."

8. From perusal of record, it appears that the applicants/accused were taken away by the police on 19.01.2021 upon which their family members immediately moved applications to the police high ups through TCS for their safe recovery, however, the applicants/accused were shown arrested in the case on 22.01.2021. In presence of the above letters the arrest shown on 22.01.2021 appears to be doubtful. The Addl. PG during his arguments also has submitted that as per CRO the present applicants/accused are involved in other criminal cases. Learned counsel for the applicants during his arguments through a statement has placed on record orders/judgments passed in the cases mentioned in the CRO wherein the applicants either were acquitted in the cases or were granted bail. Learned counsel urged that in none of the cases the applicants were convicted. He has further submitted that all these case were politically motivated.

The Honourable Supreme Court of Pakistan in case of *Jamal Uddin alias Zaubir Khan v. The State* [2012 SCMR 573] while hearing leave to appeal arising out of judgment of Peshawar High Court whereby the petitioner was declined bail, inter alia held as under :-

> "5. The argument that the petitioner has been involved in two other cases of similar nature would not come in the way of grant of petition so long as there is nothing on the record to show that he has been convicted in any one of them. …."

9. Besides above, it is also well settled that mere pendency of criminal cases against any of the accused does not ipso-facto disentitle him for grant of bail. Reliance in this regard has been placed on the case of *Tarique and 3 others v. The State* [2018 MLD 745].

10. The record shows that the applicants/accused are neither previous convict nor hardened criminals and have been in continuous custody since their arrest and are no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping them behind the bars for an indefinite period pending determination of their 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 applicants/accused, while it is yet to be determined whether they are actually involved or not, which is possible only after recording of the evidence by the trial court.

11. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicants/accused have succeeded to bring their cases within the purview of further inquiry and as such are entitled to bail and for this reason, the applicants/accused were admitted to bail subject to their furnishing solvent surety in the sum of Rs.2,00,000/- each and P.R. Bond in the like amount to the satisfaction of the trial Court, by my short order dated 04.5.2021.

12. 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 applicants/accused misuse the bail, then the trial court would be competent to cancel their bail without making any reference to this Court.

Above are the reasons of my short order dated 04.05.2021

Judge

*Tahir**