

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

**Cr. Bail Application No. 517 of 2021**

Applicant: Rashid Kashmiri son of Muhammad Akbar.  
Through Mr. Hashmat Khalid, Advocate.

Respondent: The State, through Syed Meeral Shah,  
Additional Prosecutor General Sindh.

Date of hearing: 29.04.2021

Date of order: 29.04.2021

**Arshad Hussain Khan, J:-** The applicant/accused seeks post arrest bail in F.I.R. No. 607 of 2021 registered at PS Sir Syed, Karachi, under Section 397/34 P.P.C.

2. Whereas facts of FIR No. 607 of 2021 are that the complainant, a manger of Shell Petrol Pump, sector 11-A, North Karachi, lodged FIR at PS Sir Syed on 02.11.2020, stating therein that on 02.11.2020 at about 5.13 a.m. while he was in his office, received telephonic call of cashier Zahid son of Akhundzada, who informed him that an incident of dacoity has taken place at petrol pump. Upon such information, he reached at the petrol pump where he came to know that five persons (appears to be *Pathan*) armed with weapons in black colour car, model and maker unknown, came at the petrol pump, and snatched weapon of the chowkidar of petrol pump and after breaking open lock of alimirah took away cash and fled away while fleeing they also made two fires.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has falsely been implicated in the case with malafide intentions and ulterior motives. He has further argued that applicant/accused is not named in the FIR nor specific role assigned to him in the alleged crime, which is un-witnessed by any of the person of locality where the alleged incident taken place. Further contended that one Usama son of Muhammad Fareed being relative of accused was arrested by the police and after taking bribe released him on 15.02.2021 and when Usama reached at home he disclosed to his mother that accused Liaquat his uncle (*Mamo*) along with other relatives are also in custody of the police at PS North Karachi Industrial

Area (N.KIA) and police also demanding bribe for their release. Consequently, on 17.02.2021 Mst. Zubaida, the sister of accused, sent applications to the Hon'ble Chief Justice of this Court and other forums and law enforcing agencies in respect of illegal detention of applicant/accused including others by the police. It is also contended that the alleged arrest of the applicant/accused has been shown as 18.02.202, whereas he was in custody of the Police prior to the said date. He also argued that complainant who himself was not present has failed to disclose description [hulia] of the applicant/accused in the FIR, therefore, the case of the applicant/accused is highly doubtful. It is argued that neither the applicant/accused was arrested on the spot nor recovery of any incriminating articles or looted cash has been effected from possession of applicant/accused. It is also argued that the applicant/accused was implicated in the case on the confessional statement before the police, which statement is not admissible in law in absence of proper statement under section 164 Cr.P.C. before Judicial Magistrate. It is also urged that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Lastly, he has contended that the applicant/accused is a poor person and failed to fulfill the demand of police as such he has been implicated in the false cases and since his arrest he is behind the bars and there is no likelihood that the case of the applicant will be decided in near future.

4. Learned Addl.P.G. for the State while vehemently opposing the bail application has submitted that the applicant is 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 applicant/accused and learned Addl. PG as well as perused the material available on the record.

6. From perusal of the FIR, it appears that the same has been lodged against the unknown accused persons who committed dacoity at Shell Petrol Pump, Sector 11-A, North Karachi, and took way cash 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 has been recovered from the applicant/accused.

From the record, it also transpires that the applicant/accused was got involved in the case upon his statement in the 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 applicant/accused there appears no test-identification parade has been held. 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 the record, it appears that the applicant/accused was taken away by the police upon which on 17.02.2021, the sister of the applicant/accused moved applications to the police high-ups through TCS for their safe recovery, however, the applicant/accused was shown arrested in the case on 21.02.2021. In presence of the above letters the arrest shown on 21.02.2021 appears to be doubtful. The Addl. PG during his arguments has also submitted that as per CRO the present applicant/accused is involved in other criminal cases as well. Whereas, learned counsel urged that in none of the cases the applicant was convicted.

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 also been placed on the case of *Tarique and 3 others v. The State* [2018 MLD 745].

10. The record shows that the applicant/accused is neither previous convict nor a hardened criminal and 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. Nonetheless, truth or otherwise of charges leveled against the accused could only be determined at the conclusion of trial after taking into consideration the evidence adduced by the both the parties. It may be observed that the offence alleged against the applicant/accused falls outside the prohibitory clause of Section 497, Cr.P.C. in such like case grant of bail is a rule and refusal is an exception. Reliance in this regard can be placed on the cases of *Tariq Bashir and 5 others v. The State* [PLD 1995 SC 34] and *Mohammed Tanveer v. the state* [PLD 2017 Supreme Court 733].

11. In view of the peculiar facts and circumstances of the case, I am of the opinion that, prima facie, the applicant/accused has succeeded to bring his case within the purview of further inquiry 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.1,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court by my short order dated 29.04.2021.

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 applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 29.04.2021

Judge

*Tahir\*\*\**