

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

Cr. Bail Applications No. 195,196  
and 572 of 2021

**Cr. Bail Application No. 195 of 2021**

Applicant: Saqib alias Kala son of Khair Muhammad.  
Through Mr. Peer Bux Doongah, Advocate.

Respondent: The State, through Mr. Muntazir Ali Mehdi,  
Additional Prosecutor General Sindh.

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**Cr. Bail Application No. 196 of 2021**

Applicant: Saqib alias Kala son of Khair Muhammad.  
Through Mr. Peer Bux Doongah, Advocate.

Respondent: The State, through Mr. Muntazir Ali Mehdi,  
Additional Prosecutor General Sindh.

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**Cr. Bail Application No. 572 of 2021**

Applicant: Muhammad Ramazan son of Wahid Bukhsh.  
Through Mr. Asif Ibrahim, Advocate.

Respondent: The State, through Mr. Muntazir Ali Mehdi,  
Additional Prosecutor General Sindh.

**Date of hearing: 28.04.2021**

**Date of order: 28.04.2021**

**Arshad Hussain Khan, J.-** This common order will dispose of above listed criminal bail applications as the same have arisen out of one and the same incident for which two F.I.Rs. i.e. (i) 610 of 2020, under Sections 397/34 P.P.C. against Saqib & others and (ii) 611 of 2020, under Section 23(1)(a) Sindh Arms Act, 2013, against Saqib only were registered at PS Mubina Town, Karachi.

2. Through criminal bail applications No. 195 and 196 of 2021, the applicant/accused namely; Saqib @ Kala son of Khair Muhammad whereas through criminal bail application No. 572/2021, applicant/accused Muhammad Ramazan son of

Wahid Bukhsh respectively, seek post-arrest bail in the aforementioned crimes.

3. Briefly stated the facts of the aforesaid F.I.Rs. are that complainant-Muhammad Zahid lodged FIR at PS Mubina Town on 11.12.2020 stating therein that on 10.12.2020 while he was coming to his house on foot after meeting with his friend and at about 2330 hours when he reached at *Khatam-e-Naboowat Chowk*, near *Gabol Qabrustan*, *Gulzar-e-Hijri*, Karachi, three persons on one motorcycle bearing No.KIA-1942, came from backside and on the force of weapons robbed his mobile phone Nokia along with SIM bearing No.03052468375 and cash of Rs.2,200/- and tried to flee. In the meantime, police mobile, patrolling in the area, headed by SIP Asadullah, reached there, the complainant told the entire story to the said ASI. Thereafter, the complainant along with police party chased the accused persons and apprehended them at *Gabol Qabrustan*. On inquiry, they disclosed their names as Jahanzeb @ Janzo son of Muhammad Din, Muhammad Ramazan son of Wahid Bukhsh and Saqib @ Kala son of Khair Muhammad. From their personal search, made in presence of complainant and police officials, one revolver 32 bore along with three rounds and two mobile phones viz. robbed Q-Mobile, black colour and other touch mobile Moux from Jahanzeb @ Janzo, whereas one revolver 32 bore along with three live rounds, 03 mobile phones viz. 2G Five, one touch Q-mobile and one touch mobile of black colour while from accused Saqib @ Kala one 30 bore pistol along with five rounds, robbed cash Rs.2,200/- and 04 mobile phones Q-Mobile, 01 G-Five mobile, one Nokia mobile and one touch mobile Infinix were recovered from their possession by the police. On further inquiry, they failed to produce licenses of the recovered weapons. Thereafter, police had taken the accused persons along with recovered case properties at the police station, where the complainant lodged two separate FIRs under Sections 397/34 PPC and under Section 23 (1)(a) of Sindh Arms Act 2013, against the accused persons.

4. Both the learned counsel for the applicants/accused have argued that the applicants/accused are innocent and have falsely been implicated in the case with malafide intentions and to achieve ulterior motives. They have further argued that the incident took place on 10.12.2020 at 11.30 p.m. whereas the alleged FIR have been lodged on 11.12.2020 at about 12.45 p.m. such delay creates doubt in whole prosecution story. They further argued that nothing incriminating has been recovered from the possession of applicants/accused and the alleged recovery have been foisted upon them. Learned counsel further argued that the applicant namely Saqib @ Kala on 29.11.2020 filed application before the SHO PS, Mubina Town, Karachi, against the complainant for registration of FIR against him as such this fact alone makes the case of the applicants/accused one for the further enquiry. It is further contended that there is clear violation of Section 103 Cr.P.C., and that the applicants/accused are not hardened, desperate or habitual offender; there is no sufficient reason to believe that the accused are guilty of the alleged offences, therefore, the case of the applicants/accused require further inquiry. It is also argued that the alleged offences do not fall within the prohibitory clause of Section 497 Cr.P.C. and in such like cases grant of bail is a rule and rejection is an exception. They have lastly prayed that the applicants/accused are entitled for concession of bail.

5. Learned Addl.P.G. for the State while opposing the bail applications has contended that the names of the applicants/accused alongwith their specific role are mentioned in the F.I.R. as such they are not entitled to the concession of bail.

6. I have considered the arguments advanced by both the learned counsel for the applicants/accused and learned Addl. PG as well as perused the material available on the record. Notice of this bail application has also been issued to the complainant but there is no representation on his behalf.

7. From perusal of the FIR, it appears that the alleged incident took place on 10.12.2020 at around 11.30 pm whereas the FIR was lodged on 11.12.2020 at 12.45 am, there appears

an unexplained delay of approximately 12 hours in lodging FIR whereas the place of incident is in the vicinity of the said Police Station. From perusal of the record, it further appears that the applicant-Saqib earlier on 29.11.2020 filed application before the SHO PS Mubina Town for registration of FIR against complainant-Muhammad Zahid, whereas the complainant lodged FIR against the present applicants much after the said application. Hence, such fact creates doubt in the prosecution story.

8. The record shows that the applicants/accused are not previous convict nor hardened criminal 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. There is also no F.S.L. report of ballistic expert on the record. It is well settled law that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offence. Even otherwise, it is settled principle of law that bail cannot be withheld as punishment. It is also well settled that truth or otherwise of the charges could only be determined at the conclusion of the trial after taking into consideration the evidence adduced by both the parties. Reliance in this regard can be placed on the case of Muhammad Nadeem Anwar and another v. National Accountability [2008 SC 645].

It is also imperative to note that the offences do not fall within the prohibitory clause of subsection (1) of Section 497, Cr.P.C. and as such, in the light of principles and the law laid down by the Honourable Supreme Court in cases where offences fall within non-prohibitory clause of Section 497, Cr.P.C., granting of bail has to be considered favourably as a rule, but may be declined in exceptional cases. Reliance can be placed on the case of Zafar Iqbal v. Muhammad Anwar and others [2009 SCMR 1488].

9. 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 sureties in the sum of Rs.50,000/- each and P.R. Bond in the like amount to the satisfaction of the trial court by my short order dated 28.4.2021.

10. 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 28.04.2021

JUDGE

*Tahir\*\*\**