

**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No. 796 of 2022**

Applicant : Marwat Khan Masood s/o. Masood, through  
Mr. Waqar Alam, advocate

Respondent : The State, through Mr. Fahim Hussain  
Panhwar, D.P.G.

Date of hearing : 11.05.2022

Date of order : 11.05.2022

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Marwat Khan Masood s/o Masood through instant criminal bail application seeks post-arrest bail in Crime No. 130/2022, registered at P.S. Shahrah-e-Noor Jehan, Karachi under sections 392, 397, 34, P.P.C. His earlier application for the same relief bearing No. 55/2022 in Sessions Case No. 615/2022 was heard and dismissed by the Court of V<sup>th</sup> Additional Sessions Judge Karachi-Central, vide order dated 09.04.2022.

2. Briefly stated, the facts of the case are that, on 05.03.2022 at 2200 hours, complainant Muhammad Mursaleen Mushtaq lodged the aforesaid F.I.R., alleging therein that on the said date, at about 09:00 p.m., he was standing with his friend at main road near Bravo Gym Club, Sector 14-A, Shadman Town, Karachi and was talking on mobile phone, when two persons riding on a motorcycle came there; out of them, the driver accused was having a pistol; they after robbing his mobile phone, cash of Rs.150/- and photocopy of CNIC started fleeing, but the applicant sitting on pillion seat was alighted by the complainant and his friend by holding him from his collar, while the co-accused succeeded to escape. The applicant was beaten by the people gathered there; meanwhile a police party of P.S. Shahrah-e-Noor Jehan reached the spot and arrested him, who on enquiry disclosed the name of co-accused as Adnan alias Addo.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that the offence under

section 397, P.P.C. is not applicable in the present case; that no crime weapon has been recovered from possession of the applicant at the time of his arrest; that there is no independent witness of the alleged incident despite the fact that it allegedly took place in a busy area where so many people were gathered; that the complainant has sworn Affidavit of No-Objection for the grant of bail to the applicant stating therein that the applicant is not the actual culprit; however, the same was not considered by the trial Court; that the guilt of the applicant requires further inquiry entitling him for bail.

4. On the other hand, learned D.P.G. vehemently opposes this application on the grounds that the applicant was arrested on the spot and robbed articles of the complainant were recovered from his possession; that the alleged offence is not compoundable; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled to the concession of bail.

5. I have considered the arguments advanced by the learned counsel for the parties and also perused the material available on record.

6. It appears from the perusal of the record that the applicant was apprehended by the complainant and his friend at the spot on committing robbery from the complainant and from his possession robbed articles of the complainant were also recovered. The applicant has not alleged any motive against the complainant and his friend/eye-witness for implicating him falsely in the instant case. No doubt, offence under Section 397, P.P.C. being carrying punishment with imprisonment for not less than seven (07) years does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under Section 392, P.P.C. carries punishment for imprisonment for a term which shall not be less than three years and more than ten years. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the

maximum sentence provided by the statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right. So far non-association of a witness is concerned, people collected at the scene abstain to assist the law, which is a usual conduct symptomatic of societal apathy towards civic responsibilities. As regard No-Objection Affidavit sworn by the complainant, it may be observed that the complainant after lodging of the F.I.R. has taken different position. In the case of Nazeer Ahmed v. The State (PLD 1997 SC 347), the trend that eye witnesses take summersault and give statements which are different from the prosecution case and file affidavit at the stage of hearing of bail application with the intention of creating doubt in the prosecution case to enable the accused to get the bail, was deprecated by the Apex Court.

7. It may be observed that the offences like robbery/ dacoity are frequently reported to have been committed without any restriction in urban and rural areas, which are not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of insecurity amongst public at large.

8. From the tentative assessment of the evidence on record, it appears that the prosecution has sufficient evidence against the applicant to connect him with the commission of alleged offence; therefore, he is not entitled to concession of bail; hence, I reject this criminal bail application.

9. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE