

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1037 of 2022**

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*Date* *Order with signature of Judge*

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*For hearing of Bail Application.*

**20.07.2022**

M/s. Ubedullah Malik and Shaharyar Akbar, Advocates for the Applicant.  
Mr. Siraj Ali Khan Chandio, Addl. Prosecutor General, Sindh along with S.I  
Ghulam Sarwar of P.S Ferozabad, Karachi.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this bail application, Applicant Muslim seeks his release on post arrest bail in Crime No.53/2022 of P.S Ferozabad, Karachi, under Section 379/170/171/34 PPC. The case has been challaned by the police, which is now pending for trial before the Court of 2<sup>nd</sup> Judicial Magistrate, Karachi (East). The applicant preferred his bail plea before the trial Court, which by means of order dated 15.03.2022 was declined. The applicant again filed Criminal Bail Application No.1253 of 2022 before the Court of Sessions wherefrom it was assigned to 10<sup>th</sup> Addl. Sessions Judge, Karachi (East) where after hearing the parties, learned Addl. Sessions Judge has also turned down his request for bail vide order dated 02.04.2022; hence, this bail application.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that applicant was arrested on 31.01.2022 and the case has not been proceeded. Next submits that the offence with which applicant stands charged, carries maximum punishment up to three years; hence, does not exceed the limits of prohibitory clause of section 497 Cr.P.C. Next submits that as far as CRO as pointed out by learned Addl. P.G, Sindh, is concerned, applicant has been acquitted from the charge of those cases. Hence, submits that case against applicant requires further inquiry and prays for his release on bail. In support of his contention, he submits copy of release writ issued by 2<sup>nd</sup> Judicial Magistrate, Karachi (East) (vide Criminal Case No.288/2022 re-the State Versus Muslim) being outcome of Crime No.50/2022 under section 379/170/171/34 PPC registered with P.S Ferozabad, Karachi. He further submits that name of the applicant does not transpire in the FIR. Such documents along

with his statement, taken on record. In support of his contention, he places reliance upon *KAMRAN HAIDER Versus THE STATE (1996 P.Cr.L.J 1902)*, *MUHAMMAD JAFFAR Versus THE STATE and another (1993 SCMR 248)*, *MUHAMMAD IQBAL Versus THE STATE (2003 YLR 2308(1))*.

4. On the other hand, learned Addl. P.G, Sindh, opposes the bail application on the ground that per CRO three cases are shown. He; however, could not controvert the fact that the offence with which applicant has been charge sheeted, carries maximum punishment up to three years and does not exceed limits of prohibitory clause of section 497 Cr.P.C.

5. The complainant, inspite of notice, has chosen to remain absent.

6. **Heard arguments, record perused.** Admittedly, the name of the applicant does not find place in the FIR and he has been shown arrested in this case upon the basis of further statement of complainant. As far as further statement is concerned, superior Courts have not considered said piece of evidence as supportive to prosecution and further statement cannot be equated with the FIR. Moreover, the case is being tried by Judicial Magistrate where after recording evidence of the prosecution witnesses, if prosecution may succeed to prove its charge against him (applicant) even then punishment of more than three years cannot be visualized. In such circumstances, bail becomes right of the accused and refusal will be an exceptional. Reliance can be placed upon the case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)*.

7. The upshot of above discussion is that applicant has succeeded to make out a good prima facie case for his release on bail in terms of Section 497 Cr.P.C. Resultantly, instant bail application is hereby allowed. Applicant **Muslim son of Shan Muhammad**, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

8. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail. Let copy of this order be communicated to learned trial Court through MIT-II.

9. This Criminal Bail Application is disposed of in the terms indicated above.

**JUDGE**