

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Application No.S-708 of 2011
Cr. Bail Application No.S-535 of 2011

DATE ORDER WITH SIGNATURE OF JUDGE

23.04.2012.

Mr. Nandan A. Kella, Advocate for Applicant in Cr. B.A No.S-708/11.
Mr. Abdul Rashid Mughal, Advocate alongwith Applicant in Cr. Bail
Application No.S-535/11.

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O R D E R

AOEEL AHMED ABBASI, J: Through instant order, I intend to dispose of both the
above bail applications as the same arise out of one and same crime.

Prosecution case as stated in the F.I.R. is as follows:-

It is inter alia contended by the learned Counsel for the Applicant in Cr. Bail
Application No.S-708/11 that the Applicant is innocent and has been falsely
implicated in the instant crime on account of previous enmity whereas the alleged
offences do not fall within prohibitory clause. However, per learned Counsel, the
Applicant accused was arrested on 14.5.2011 and since then he is behind the bars
whereas challan has been submitted however, no evidence of prosecution witnesses
has so far been recorded. Learned Counsel has referred to provisions Section 322 PPC
and states that such section does not fall within prohibitory clause as there is no
punishment except Diyat amount which is to be determined after conclusion of the
trial. Per learned Counsel, nothing incriminating has been produced by the
prosecution, which may directly implicate the Applicant/accused with the instant
Crime. In support of his contention, learned Counsel has placed reliance on the
following cases:-

1. PLD 1995 S.C 34 ()
2. 2000 P.Cr.L.J 203 ()
3. 1998 MLD 1537 (Muhammad Nadeem V. The State)

Conversely, learned Counsel for Complainant has opposed the grant of bail to
the Applicant and states that since the present Applicant was conniving with main
accused Faraz Khan in the instant crime therefore, he is equally responsible for the
same offence hence he may not be enlarged on bail. He further states that the
Applicant has been nominated in the F.I.R. with specific role.

Learned Deputy Prosecutor General Sindh for the State also opposed the grant of bail to the Applicant to the extent that the Applicant has been nominated in the F.I.R. and in terms of Section 149 PPC is responsible for the same.

I have heard both the learned Counsel as well as Deputy Prosecutor General Sindh and perused the record.

On tentative assessment of the record, it appears that instant F.I.R. has been registered in view of the order passed by the learned IIIrd Additional Sessions Judge, Hyderabad, on the application filed U/s 22-A&B Cr.P.C, wherein the present Applicant has not been nominated nor any role has been assigned to him. There is delay of about 27 days in moving the application before the Sessions Judge whereas there is delay of about 42 days in registration of F.I.R.. The element of consultation and false involvement of the present Applicant cannot be ruled out whereas disputed cheques have not been issued by the present Applicant and the matter requires further inquiry.

I am of the view that the Applicant has made out a case for grant of bail. Accordingly, he is admitted to bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (Rs. One Hundred Thousand) and P.R Bond in the like amount to the satisfaction of learned Trial Court.

Needless to observe that the observations made hereinabove are tentative in nature and will not prejudice the decision of the Trial Court, who will decide the case strictly on merits based on material available.

Bail application stands disposed of in the above terms alongwith pending applications.

JUDGE

Ali Haider/P.A.

