

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 2156 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

13-01-2023

Mr. Liaquat Hussain advocate holds brief for Mr. Mukhtar Hussain
Shirazi, Advocate a/w applicant.
Ms. Rahat Ahsan, Addl.P.G.

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Omar Sial, J: F.I.R. No. 335 of 2022 was registered at the Gizri police station on 28.07.2022 under sections 381 and 34 P.P.C. on the complaint of one Imran Chawla. Chawla reported that while he was away from his home, he was informed by his wife that she had gone to visit her brother on 26.07.2022 and that when she returned she saw the door of the house open and a number of valuables missing from the home. Chawla suspected that 2 of his domestic workers, namely Sakina and Faizan were behind the theft.

2. The learned counsel for the applicant has argued that the applicant was not named in the F.I.R. nor was any doubt cast on him by the complainant nor was any recovery effected from him. According to him the applicant has been solely implicated in the case on the statement of a co-accused, which co-accused had named him due to the torture inflicted upon him by the investigating officer of the case. The learned Additional Prosecutor General agreed that the only evidence against the applicant is the statement of a co-accused.

3. I have heard the learned counsel for the applicant and the learned Additional Prosecutor General. None appeared on the behalf of the complainant despite notice. My observations and findings are as follows.

4. The record reflects that a substantial number of valuables were taken away from the home of the complainant. The items listed in the F.I.R. as being stolen are such that probably a truck was required to remove them from where they were kept. It seems unusual that the investigating officer could not unearth how the theft took place and seems to have done little to investigate. Be that as it may, it is the prosecution case that recovery of the stolen goods was made from one Tariq Ali on 25.09.2022 and that it was Tariq Ali who led the police to a shop in Shireen Jinnah Colony from where some more of the stolen goods were recovered from 2 persons by the name of Rab Nawaz and Mohammad Shafiq. These 2 individuals seem to have confessed that they purchased the goods from Tariq Ali. The applicant's name cropped up in this case when Tariq Ali at some point in time while being interrogated told the police that the applicant and one other were his partners in crime. Apart from this statement made by Tariq Ali, there is no other evidence that established a nexus of the applicant with the crime complained of. Prima facie the statement of the co-accused may not be admissible in evidence. Whether or not the applicant had accompanied Tariq Ali to steal from the house of the complainant will have to be determined after the learned trial court has had an opportunity to review the evidence gathered by the prosecution. Reference in this regard may be made to Ali Raza vs The State (2022 SCMR 1223) and Abdul Majid Afridi vs The State (2022 SCMR 676).

5. I find no reason at this stage to disbelieve the argument of the learned counsel for the applicant that the police torture was the reason that Tariq Ali had named the applicant. Police malafide therefore cannot be conclusively ruled out at this preliminary stage.

6. In view of the above the interim pre-arrest bail granted to the applicant is confirmed on the same terms and conditions.

JUDGE