

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1496 of 2021

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

21-4-2022

Mr. Muhammad Asif Ibrahim, Advocate a/w applicant.
Mr. Zafar Iqbal, Advocate a/w complainant.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Muhammad Aslam has sought pre-arrest bail in crime number 371 of 2020 registered under sections 392 and 34 P.P.C. at the Ibrahim Hyderi police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 4th Additional Sessions Judge, Malir on 27-5-2021.

2. A background to the case is that the aforementioned F.I.R. was registered on 3-7-2020 on the complaint of Muhammad Shahid who reported an incident which had occurred earlier that day. The complainant recorded that Muhammad Aslam (applicant) along with 3 to 4 other people on the show of weapons had forcibly snatched his Suzuki vehicle on which he was carrying milk in drums.

3. Learned counsel for the applicant has argued that there is an ongoing business dispute between the parties which during the pandemic and as a consequence of financial distress that everybody faced, resulted in friction between the parties over the rate of milk; that this F.I.R. is based solely on malafide on the part of the complainant and that the co-accused have been granted bail.

4. Learned A.P.G. has supported the impugned order and has argued that during investigation applicant has confessed that he had stolen the milk and that there are eye witnesses in the case. Learned counsel for the complainant has argued that the applicant is nominated in the F.I.R.

5. I have heard the learned counsels for the applicant and the complainant as well as the learned Assistant Prosecutor General. My observations and findings are as follows.

6. It appears from the record that when the F.I.R. was registered and the section 161 Cr.P.C. statement of the complainant recorded, he had taken the stance that he was travelling alone when the incident occurred. Learned A.P.G. has admitted that subsequently no 162 Cr.P.C. statement was recorded. It therefore is unexplained at this stage as to how and why the names of 3 eye witnesses were included in the challan who were said to be travelling with the complainant at the time of the incident. Upon a query from the complainant to clarify the change in his stance, he stated that he had told the names of the people travelling with him but that the police did not record his statement accurately and did not mention their names. He however had no explanation to offer as to why the police would do such a thing.

7. The recovery of the vehicle on the pointation of the applicant requires clarification at trial when evidence is led as at the moment there is a confusion as to how the vehicle was recovered with 8 empty drums of the milk and the police failing to discover as to where did the milk which was in the containers go. Admittedly, the same has not been recovered even though it is claimed by the prosecution that it was the applicant who had told the police where the vehicle and the empty drums were.

8. I am also surprised that Ramzan, owner of the milk in question and the owner of the vehicle has failed to record his 161 Cr.P.C. statement and has remained silent during the entire episode. Ramzan is not present in court today too but his brother is present whose statement has also not been recorded by the I.O. during investigation. No evidence has been shown to me to prove that the vehicle in question was owned by Ramzan. Learned counsel for the complainant has also not been able to satisfy me as to admissibility of evidence i.e. confession of the applicant in police custody especially when the recovery of vehicle on the pointation of the accused is doubtful at this preliminary stage.

9. Learned A.P.G. has also raised concern that after grant of bail the applicant has misused concession of bail by threatening and intimidating the complainant party. At this stage, apart from a verbal statement of learned A.P.G., there is no evidence on record to corroborate his version. The State as well as learned counsel for the complainant are at liberty to file an application seeking cancellation of bail if the applicant abuses the concession of bail. It appears that

Danial, son of the applicant who is also made an accused on the basis of the inclusion of names made subsequently in this case has already been granted bail and on the ground of consistency the applicant is also entitled to the same concession.

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

JUDGE