

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 378 of 2023

Crl. Bail Application No. 568 of 2023

Applicant : Ayaz Ali @ Baban
through Mr. Muhammad Nawaz Chohan,
Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Date of short order: 17th May, 2023

Date of reasons : 30th May, 2023

ORDER

Omar Sial, J: At the very outset the learned counsel for the applicant submits that the co-accused in this case, being Zahid Hussain, has been granted bail on 17.03.2023 by this court. Learned APG confirms that the role of the present applicant is similar to that of Zahid Hussain except for the one claim that a pistol was found from the possession of the current applicant. In order to facilitate reference, the order passed on 17.03.2023 was as follows:

“The 2 bail applications pertain to different incidents but are so interconnected that both will be disposed of through this common order.

2. The prosecution case is that on 08.12.2022, the Mochko police station received information that a man who had received a bullet injury had been brought to the hospital. S.I. Mohammad Zafarullah went to the hospital where he met with the injured who identified himself as Abid Wakil. Abid told him that he was a labourer and while he was on his lunch break from the factory he worked in, 3 boys came on a motorcycle and by showing him a pistol they took away 24,000 rupees and a mobile phone which he had with him at that time. The boys were escaping when he raised hue and cry which resulted in one of the boys firing at him from his pistol, which fire hit Abid on his stomach. **F.I.R. No. 506 of 2022** was registered under sections 392, 394 and 34 P.P.C. S.I. Mohammad Zafarullah claimed that while he was busy searching for the accused he received a phone call from the police station that 2 of the 3 accused had been arrested. It was alleged that the 2 boys had been identified as (i)

Ayaz and (ii) Zahid Hussain (the applicant). A pistol was recovered from Ayaz whereas the national identity card of Abid Wakil was recovered from Zahid Hussain. It was further alleged that the motorcycle on which the 2 boys were arrested was a stolen one.

3. The record reflects that earlier, one Israr Ahmed had lodged **F.I.R. No. 388 of 2022** registered under sections 392, 397, 412 and 34 P.P.C. at the SITE B police station on 25.11.2022 reporting an incident that occurred on 11.11.2022. He recorded that he was going home on his motorcycle he came across 2 men standing on the road. The 2 men intercepted Israr Ahmed, one pulled out a pistol and snatched Israr's valuables, including his motorcycle.

4. The motorcycle recovered in the case arising out of F.I.R. No. 506 of 2022 was said to be the same motorcycle on which the applicant was when he was arrested in the case arising out of F.I.R. No. 388 of 2022.

5. Zahid Hussain has sought post arrest bail in both the F.I.R.'s he has been booked in. Earlier, his applications seeking bail were both dismissed through separate orders on 31.01.2023 and 01.02.2023 by the learned 12th Additional Sessions Judge, Karachi West.

6. I have heard the learned counsel for the applicant as well as the learned APG. The complainant did not effect an appearance despite notice. My observations and findings are as follows.

7. The first port of call in such an incident especially when ones motorcycle has also been stolen is the police. While I can understand that people may be reluctant to report when a phone or a wallet was snatched from them, it is rare or never that when a vehicle is stolen that its owner doesn't inform the police. People are worried that their snatched vehicle may be used in a criminal activity and thus are quick to at least report its theft with promptitude to save themselves trouble. In this case the complainant did not do anything except search for his motorcycle himself for 2 weeks. No explanation has been provided for the delay in registering the F.I.R. I have been shown no documents which would prima facie show that the complainant was indeed the owner of the motorcycle recovered. The investigating officer has not made the requisite inquiries at the motor vehicle registration department in this regard. I also notice that the complainant of the case declined to come and identify the applicant in an identification parade on the ground that he was busy. He also did not appear on the notices sent to him by this court.

8. The empty ostensibly recovered from the scene of the crime in F.I.R. No. 388 of 2022 matched with the pistol ostensibly recovered from Ayaz and not from the applicant. I also find it odd that after having committed the crime in F.I.R. No. 388 of 2022, the applicant would be roaming around with the national identity card of the man he had shot and injured a little while ago but that there was no Rs. 24,000 and the phone the accused had stolen from Abid Wakil. Apart from this, I also find it odd that a labourer of a factory i.e. Abid Wakil, was roaming around at work with Rs. 24,000 in his pocket without any rhyme or reason. The fact that Abid Wakil also was not asked to come to identify whether the applicant was one of the same person who had robbed him, raises doubt at this preliminary stage. Things could have been a lot clearer had the

police bothered to investigate the case better. It seems that in a number of such cases the police claims that arrests were made of boys for possessing unlicensed weapons and during that interrogation they confess to a number of street crimes that they have committed. The police then does no further work and files the challan based on the confessions made by accused claiming that the case had been solved.

9. While I have given little concessions to persons accused of street crime and also consider the fact that complainants might be scared to come and identify the accused, in this particular case, the events that have been narrated to me by the prosecutor, make me conclude that this is a case of further inquiry. The applicant is therefore admitted to bail subject to his furnishing a solvent surety of Rs. 250,000 and a P.R. Bond in each case in the like amount to the satisfaction of the learned trial court."

2. The applicant is also entitled to the same concession as co-accused Zahid Hussain on grounds of consistency.
3. Above are the reasons for the short order dated 17-05-2023.

JUDGE