

**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Bail Application No.S-412 of 2023
[Imran Magsi versus The State]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant : **Through Mr. Fazal Rehman advocate**

Complainant : **In person**

The State : **Through Mr. Shawak Rathore A.P.G**

Date of hearing : **19.05.2023**

Date of decision : **19.05.2023**

ADNAN-UL-KARIM MEMON, J: Applicant Imran Magsi seeks post-arrest bail in Crime No.56 of 2023 registered at P.S Bhitai Nagar Hyderabad for offence punishable under Section 397 PPC. The said plea of applicant was raised before the trial Court; however, his request was turned down vide Order dated 17.04.2023 on the premise that the applicant is nominated in the FIR and the parties have now patched up and the complainant has recoiled from his statement incorporated in 154 Cr.P.C. book which practice has been deprecated by the superior Courts.

2. The Complainant lodged the aforesaid FIR on 08.04.2023 at 1700 hours by alleging therein that on same day at about 1600 hours he was going to Citizen Colony Hyderabad and when reached at PSO Pump, NLC Dry Port suddenly three persons including present applicant, came on motorcycle and on the force of weapons committed robbery of Samsung Mobile and cash Rs.5000/- from him. The report of such incident was lodged promptly by Bhitai Nagar Police Station; subsequently applicant was arrested by police on 10.4.2023; however, no crime weapon was recovered from his possession.

3. Mr. Fazal Rehman, learned counsel for applicant submits that the applicant is innocent and has falsely been implicated in present crime by the police, as his motorcycle allegedly hit to police mobile as such they being annoyed lodged false and fabricated FIR under the complaint of complainant, who when came to know about arrest of applicant appeared before the trial Court and exonerated him from the present crime; however, his statement was not considered by the trial Court, resultantly the post-arrest bail of the

applicant was rejected; that no specific role has been assigned to applicant; that alleged mobile phone has not been recovered from the applicant; that though the complainant had given no objection before the trial Court, yet his bail application was dismissed. He prayed that applicant may be admitted to post arrest bail in the aforesaid crime.

4. Complainant present in person narrated the same story as narrated in the trial Court and submitted that he has no objection if the bail application of applicant is allowed. This statement of the complainant has been strongly objected by learned APG on the ground that once the accused is nominated in the robbery case, he cannot subsequently be exonerated by the complainant and the matter has to be decided on merits as the offence committed by the applicant relates to society for which no concession is required in such a heinous crime which is non-compoundable. He further submitted that in similar kind of case he has already been booked; therefore, applicant is not entitled to the concession of post-arrest bail. He prayed for dismissal of the instant bail application.

5. I have heard the arguments of counsel for the parties including the submissions made by the complainant who is present in court and perused the record with their assistance.

6. Tentative assessment of record reflects that the I.O. failed to recover crime weapons allegedly carried by the accused in commission of alleged offence. Complainant has narrated a different story which was made by him before the police which was incorporated under Section 154 Cr.P.C. The question is whether the bail application of applicant could be rejected on the premise that complainant has recoiled from his earlier statement and raised no objection if the applicant is enlarged on post-arrest bail.

7. The aforesaid question requires detailed deliberation and this Court from the tentative assessment of record has to see the involvement of applicant in the alleged crime. Record reflects that police has not yet been bothered to recover the crime weapon allegedly used by the applicant in commission of the offence and it is for the trial Court to see the culpability of applicant in the subject crime which could only be possible if evidence of complainant is recorded.

8. The next question whether the bail could be refused based on mere pendency of similar crime against the applicant, the law on the subject is very

clear that every person is deemed to be innocent until proven guilty, mere pendency of FIRs could not disentitle the person from the concession of bail if he / she makes out a case of bail on merits and the Court shall not confine itself to the second case lodged against the accused, for the reasons that every case has different facts, thus every case has to be decided based on facts and law on the subject, therefore, mere pendency of criminal case would not debar the accused to apply for the bail.

9. For the above reasons, by short order dated 19.5.2023 the applicant was granted post-arrest bail in FIR No.56 of 2023 registered at PS Bhitai Nagar Hyderabad for offence under Section 397 PPC.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial.

JUDGE

Sajjad Ali Jessar