

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 681 of 2023

Applicant : Syed Rehman s/o. Hameedullah, through
Mr. Nadeem Ahmed Azar, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General.

Complainant : Haris Abbas s/o. Abbas Ali Jamali (*Nemo*)

Date of hearing : 06.06.2023
Date of order : 06.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application applicant/accused Syed Rehman s/o. Hameedullah seeks post-arrest bail in Crime No. 14/2023, registered at P.S. Artillery Maidan , Karachi under sections 392, 397, 34, P.P.C. His earlier application for the same relief bearing No. 738/2023 was heard and dismissed by the Court of IX-Additional Sessions Judge, Karachi-South vide order, dated 14.03.2023.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 21.01.2023 at about 1400 hours at footpath near Trade Tower, Abdulla Haroon Road, Saddar, Karachi three unknown young persons, duly armed with fire arm weapon, riding over 125 motor cycle robbed two mobile phones and cash of Rs.10,000/- from the complainant and ran away.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that the FIR has been registered after delay of 11 days and complainant has miserably failed to give any plausible explanation of such delay; that no description of the accused persons is mentioned in the F.I.R.; that there is no independent witness of the alleged incident despite the fact that it allegedly took place in a busy area; that alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C.;

that the complainant has sworn Affidavit of No-Objection for the grant of bail to the applicant; however, the same was not considered by the trial Court; that the applicant is behind the bars since day of his arrest i.e. 10.02.2023; however, the trial has yet not been concluded and the delay in trial is not on the part of the applicant; that the guilt of the applicant requires further inquiry entitling him for bail. In support of his contentions, learned counsel relies upon the case of *Tasawar Hussain v. The State and another* (2021 YLR Note 124) Islamabad, *Wajid Ali and another v. The State* (2020 YLR Note 59) Gilgit-Baltistan Chief Court, *Shahid v. The State and another* (2017 YLR Note 81) Lahore and *Fida Ahmad v. The State* (2020 YLR Note 153) Gilgit-Baltistan Chief Court.

4. On the other hand, learned Addl. P.G. vehemently opposes this application on the grounds that the applicant has been identified by the complainant in identification parade held before the concerned Judicial Magistrate; that the alleged offence is not compoundable; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled to the concession of bail.

5. Heard, record perused.

6. It appears after hearing the learned counsel for the applicant as well as learned Addl. P.G. and perusing material on the record that co-accused Muhammad Khan s/o. Muhammad Hussain was arrested in Crime No. 634/2022 registered under section 393, 394, 397, 34, P.P.C. at P.S. Peerabad, who during interrogation disclosed his involvement in the instant case alongwith present applicant and co-accused Hazar Ali, whereafter on 10.02.2023 applicant was arrested and produced before concerned Magistrate for identification parade, where complainant identified him as one of the accused involved in the instant case. The applicant has not alleged any motive against the complainant for implicating him falsely in the instant case. No doubt, offence under Section

397, P.P.C. being carrying punishment with imprisonment for not less than seven (07) years does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under Section 392, P.P.C. carries punishment for imprisonment for a term which shall not be less than three years and more than ten years. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right. So far non-association of a witness is concerned, people collected at the scene abstain to assist the law, which is a usual conduct symptomatic of societal apathy towards civic responsibilities. As regard No-Objection Affidavit sworn by the complainant, it may be observed that the complainant after lodging of the F.I.R. has taken different position. In the case of Nazeer Ahmed v. The State (PLD 1997 SC 347), the trend that eye witnesses take somersault and give statements which are different from the prosecution case and file affidavit at the stage of hearing of bail application with the intention of creating doubt in the prosecution case to enable the accused to get the bail, was deprecated by the Apex Court.

7. It may be observed that the offences like robbery/ dacoity are frequently reported to have been committed without any restriction in urban and rural areas, which are not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of insecurity amongst public at large. The case law cited by the learned counsel for the applicant being on distinguishable facts, do not advance the case of the applicant for the grant of bail.

8. From the tentative assessment of the evidence on record, it appears that the prosecution has sufficient evidence against the applicant to connect him with the commission of alleged offence; therefore, he is not entitled to concession of bail; hence, I reject this criminal bail application.

9. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai