

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Criminal Bail Application No. 759 of 2023

Applicant : Javed Hussain s/o. Gul Muhammad, through  
Mr. Muhammad Daud Jakhrani, advocate

Respondent : The State, Mr. Syed Meeral Shah, Additional  
Prosecutor General.

Complainant : Muhammad Azeem s/o. Nazeer Ahmed (*Nemo*)

Date of hearing : 21.06.2023  
Date of order : 21.06.2023  
-----

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant criminal bail application applicant/accused Javed Hussain s/o Gul Muhammad seeks post-arrest bail in Crime No. 1278/2022, registered at P.S. Shah Latif Town Malir, Karachi under sections 392, 397, 353, 324, 34, P.P.C. His earlier application for the same relief in Sessions Case No. 464/2023 was heard and dismissed by the Court of Additional Sessions Judge-I (M.C.T.C.), Malir Karachi vide order, dated 20.03.2023.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 05.11.2022 at about 11:15 p.m. at Sector A/22, Double Road, Shah Faisal Town, Malir Karachi three persons, duly armed with weapons and riding on a motorcycle, robbed a purse containing cash amount Rs.20,300/-, copy of CNIC and key of the motorcycle from complainant Muhammad Azeem and tried to flee; however, police on patrolling in the area reached there, where upon the accused started firing on them and on their retaliation all accused persons received fire arm injuries; out of whom, two accused persons succumbed to injuries on the spot, while third one (*applicant*) was apprehended and from his possession one 30 bore pistol loaded with two bullets and robbed articles were recovered.

3. The learned counsel for the applicant contends that applicant is innocent and has falsely been implicated in this case by the police mala fidely, otherwise he has no nexus with the alleged incident; that the applicant sells ice-cream in Shah Latif Town

and police implicated him as he refused to pay them Rs.5,000/- per month as *Bhatta* for selling ice-cream in the said locality; that on 05.11.22 at about 23:00, the applicant was coming back to his home and when he reached near Usmania Masjid, two persons on a motorcycle robbed Rs.30,000/- from him; that the applicant resisted against the alleged robbers who caused him injuries, where after he asked the people gathered at the incident to inform his family members residing nearby whereupon his brother and wife came to the place of incident and took him to nearest doctor, where he was given first- aid and then he was brought at police station where necessary letter was issued and then he was taken to Jinnah Hospital, where he was got admitted, which fact is supported by the Medico Legal Certificate; however, during treatment he was arrested by the police; that applicant's family moved applications to the concerned Magistrates and senior police officers for collection of CCTV Footages from P.S Shah Latif Town and Jinnah Hospital and for recording statements under section 161, Cr.P.C. of the applicant's brother and wife during the investigation but with no fruitful result; that no person from police side or any other person from public received any bullet injury during the alleged encounter; that the place of incident is a densely populated area; however, no independent witnesses has been associated as witness; that the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C. except section 324 P.P.C.; that the guilt of the applicant requires further inquiry entitling him to for bail.

4. On the other hand, learned Addl. P.G. vehemently opposes this application on the grounds that the applicant was caught red handed and from his possession unlicensed pistol and robbed articles of the complainant were recovered; 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 that the applicant was arrested from the spot in injured condition and the robbed articles were recovered from his possession. He was identified by the

complainant against whom no enmity has been claimed by him. The prosecution witnesses have fully implicated the applicant in commission of alleged offence in their 164, Cr.P.C. statements. Applicant's claim with regard to his false implication is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law.

7. 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.

8. 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.

9. 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.

10. 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**