

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 582 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

02-05-2023

Mr. Muhammad Hanif, Advocates for applicants.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Mohammad Shahzad and Mohammad Ashraf have sought post arrest bail in crime number 438 of 2022 registered under sections 397 and 34 P.P.C. at the Gulberg police station in Karachi. Earlier, their application seeking bail was dismissed by the learned 5th Additional Sessions Judge, Karachi Central on 13-03-2023.

2. A background to the case is that the aforementioned F.I.R. was registered on 09.12.2022 on the complaint of one Mohammad Irshad who reported an incident of earlier that day. He recorded that he was standing on the road when 2 motorcycles on which were riding 2 men each came to the spot and took his phone from him on gunpoint. A mobile came on the spot and arrested all 4 persons. The applicants were two of those persons. A pistol apart from the stolen phone was recovered from Shahzad whereas a pistol was recovered from Ashraf.

3. I have heard the learned counsel for the applicant and the learned APG. The complainant did not effect an appearance despite notice.

4. What arises suspicion in the present case is the section 161 Cr.P.C. statement of the witness Sikander Alam. He claims to be an eye witness of the incident. This witness was a resident of a katchi abadi which was located far away from the place of incident. In his section 161 Cr.P.C. statement he has recorded that while he was standing close to the place where the incident took place, he saw the incident unfolding. Learned APG

has been unable to provide an explanation as to what was this witness doing in an area where he did not reside and how did he know the name of the complainant. His statement appears to be a nearly exact copy of the statement of the complainant, which too is unnatural. It is this witness, who prima facie was being a good Samaritan, who also pointed out the place of incident to the investigating officer. The learned APG has been unable to provide a satisfactory answer as to why the complainant could not have pointed out the place of incident and why was it left to the good Samaritan to do so? It has historically been noticed by this court that witnesses such as Sikander Alam, for some unexplained reason, always are residents of a katchi abadi with no real address. Subsequently, such witnesses disappear from the face of this earth and when the police goes looking for them, inevitably, the report is that as the address is of a katchi abadi, the witness cannot be found. I notice that the section 161 Cr.P.C. statement of the witness does not also include his national identity card number. Malafide of the police and the complainant cannot be conclusively ruled out at this stage too. This witness requires to be cross examined before what he says can be relied upon. The case of the applicants in these circumstances is one of further inquiry.

5. Above are the reasons for the short order of 17.04.2023.

JUDGE