

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

Cr. Bail Appln:No.S-519 of 2023

Applicant: Zubair son of Ahmed by caste Mallah,
through Mr. Mian Taj Muhammad Keerio, Advocate.

Cr. Bail Appln:No.S-573 of 2023

Applicant: Shahzad son of Muhammad Uris by caste Mallah,
through Mr. Sameeullah Rind, Advocate.

Respondent: The State through Ms. Safa Hisbani, A.P.G.

Date of hearing: **18.09.2023**

Date of Order: **18.09.2023**

ORDER

ARSHAD HUSSAIN KHAN, J:- By this single order I intend to dispose of the above captioned two bail applications arising out of same Crime bearing No.35 of 2023 registered at P.S. Badin for offences under Sections 377-B, 354, 34, 509 PPC whereby applicants / accused named above seek their post arrest bail after their bail plea was declined by the learned 2nd Additional Sessions Judge, Badin vide order dated 19.04.2023.

2. The facts of the prosecution case in nutshell are that complainant-Asif Jawaid being Principal in APS Badin Cantonment lodged FIR on 03.02.2023 at 1800 hours, stating therein that on the same day at about 1350 hours as usual the school was off and the children started to go their homes. After some time girl students of school came at his office, who told him the fact that when they were going to home after vacation outside the gate, three unknown persons standing there in intoxicated condition harassed them, chased and touched them. After that the Guard apprehended one person as pointed by them, who disclosed his name as Shahzad (present applicant) and two other accused persons made their escape good. The arrested accused Shahzad disclosed that he is Driver of MPA Taj Muhammad Mallah and used to come for pick and drop of his children. It is further alleged that CCTV footages were checked and found said

Shahzad Mallah in intoxicated condition, chasing the students of school, looking them, touching hands with evil intention and causing harassment. Thereafter, they told such fact to PT Master Haji Muhammad and MCO Anwar Watto, however, the parents of students requested not to disclose the names of students. Hence, FIR was lodged.

3. Learned counsel for the applicants contended that the applicants are innocent and they have falsely been implicated in this case by the complainant due to malafide intention as allegedly when this incident took place that was school closing timing and hundreds of male and female students were available there which does not attract to a prudent mind that in such a mob how applicants tried to commit such an offence despite of the fact that applicant Shahzad used to come there for pick and drop of the children of said MPA hence, the sole evidence of prosecution case reliant on CCTV camera but the same requires deeper appreciation at the stage of trial. It is further contended that all the PWs are interested and colleagues of the complainant who was serving as Principal in subject School. It is also urged that FIR is delayed for about 4½ hours, for which no plausible explanation has been furnished. They contended that the complainant-Asif Javed has already sworn his affidavit wherein he has given no objection in favour of applicants / accused if they granted on bail and also stated that they may be acquitted from the charge, he has no objection due to compromise between the parties and he does not wish to proceed with the subject case further, as such, the case against applicants / accused requires further inquiry and at this stage they are entitled for grant of bail. They prayed that applicants are in jail since their arrest and no more required for further investigation therefore, they may be released on bail on point of further inquiry.

4. Learned A.P.G for the State vehemently opposed for grant of bail to the applicants/accused on the ground that they have been nominated in the FIR with specific role of committing the offence of a serious nature.

5. Heard argument and perused the record.

6. From perusal of record it appears that no independent witness has been cited in this case except the PWs who are allegedly colleagues of the complainant-Asif Jawaid (Principal) in the same School. Moreover, surprisingly record shows that neither the names of victims disclosed by the complainant in his FIR nor their any statement[s] u/s 161 Cr.P.C could be brought on record but only on the pretext made by the complainant that their parents were not willing to disclose their names, which makes the whole episode, so narrated by the complainant in this case, for further inquiry and probe at the stage of trial. Apart from this, complainant-Asif Javed has already sworn an affidavit before this Court wherein he has given no objection in favour of applicants / accused by stating that if the applicants are admitted on bail and thereby acquitted from the charge, he has no objection due to the compromise between the parties; therefore, he does not wish to proceed with the subject case further. On a query, learned counsel for the applicants categorically stated that now the complainant-Asif Jawaid (Principal) after resigning from his job has been shifted to Punjab Province and perhaps due to such reason the subject case is not being pursued and due to non-appearance of the complainant and his witnesses before the trial Court, the trial is pending without any progress. In this regard, the case diaries of the learned trial Court available on record substantiate the contention of learned counsel. In such situation, the applicants cannot be kept behind the bars for an indefinite period. The sections applied in the FIR are not compoundable, however, the complainant prima facie does not want to pursue the matter any further on account of certain compromise. In the case of FIDA AHMAD v. The STATE (2020 YLR Note-153), it is held as under:-

“9. Although offences / sections reflected in the FIR are not compoundable and do not fall within the ambit of section 345, Cr.P.C., however, when the complainant does not want to pursue the matter any further and complainant and his daughter have forgiven the accused / petitioner by entering into compromise outside of the court, therefore, I am of the considered view that compromise is relevant factor / ground for grant of bail to the petitioner at this stage. My this view is fortified by view expressed by the Hon'ble Judges of superior courts in reported judgments 2009 PCr.LJ 542 and 2009 PCr.LJ 780.”

7. In another case of MAHBOOB SANI v. THE STATE (2009 P.Cr.L.J 542), it is held as under:-

“6. Though the offence is not compoundable and the petitioner is not entitled to bail on the ground of compromise, but on the principle of forget and forgive as annunciated in the dictum handed down in the case of Aziz Khan and another v. The State and another 2004 P.Cr.L.J.490, the compromise can be taken as a mitigating circumstances while considering the request of post arrest bail of an accused/petitioner.....”

8. In view of above and no objection extended by the complainant himself, the case against the applicants / accused requires further inquiry within the parameters of Sub-Section (2) to Section 497 Cr.P.C; therefore, the applicants / accused are admitted to bail subject to their furnishing solvent surety in sum of Rs.200,000/- (Rupees Two Hundred Thousand) each and PR bonds in the like amount to the satisfaction of learned trial Court.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicants / accused misuse the bail, then the trial Court would be competent to cancel the bail of the applicants / accused without making any reference to this Court.

The instant bail application is disposed of accordingly.

JUDGE