

IN THE HIGH COURT OF SINDH KARACHI**CRL. BAIL APPLICATION NO. 2493 OF 2023**

Applicant : Salman son of Muhammad Habib
through Mr. Pervaiz Akhter Butt,
Advocate

Respondent : The State
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General Sindh

Date of hearing : 7th December 2023

ORDER

OMAR SIAL, J. Imran Alam was standing at a roadside on 29.09.2023 when two boys on a motorcycle came there, pulled out a pistol on him, and deprived him of his cellular phone and the cash he had. The commotion attracted the attention of a nearby police mobile and a chase ensued. Some distance further the police succeeded in stopping and apprehending the robbers. The boy driving the motorcycle was identified as Salman (who is the applicant in this proceeding) while the pillion rider was identified as Adeel, who also had a pistol. Imran's phone and purse were also recovered from Salman. The boys were arrested and F.I.R. No. 775 of 2023 was registered under sections 397 and 34 P.P.C. at the Shahrah-e-Faisal police station.

2. Salman sought post-arrest bail from the learned 3rd Additional Sessions Judge, Karachi East; however, his application was dismissed on 24.10.2023.

3. I have heard the learned counsel for the applicant and the learned Additional Prosecutor General. The learned counsel for the applicant has argued that the F.I.R. was lodged after an inordinate

delay of one hour; the IMEI No. of the cellular phone is not mentioned in the F.I.R.; recovery was effected from the co-accused Adeel, and not the applicant; he does not have a previous crime record; violation of section 103 Cr.P.C.; no identification parade was held; investigation is complete; punishment falls within the non-prohibitory clause. He also cited numerous judgments. I have not listed them as all the judgments cited were on well known principles of law. The learned Additional Prosecutor General on the contrary submitted that the applicant did have a crime record; the witnesses to the memo of arrest and recovery are both independent and private persons hence section 103 Cr.P.C. was not violated; the applicant was arrested on the spot. My observations and findings are as follows.

4. A hour delay between the commission of an offence and registration of F.I.R. can by no standards be termed as an “inordinate delay”. On the contrary, it signifies the F.I.R. being registered promptly. In the FIR it is clearly mentioned that recovery of purse and mobile phone was effected from the applicant, he was driving the motorcycle and had moments ago partaken in the crime of robbing a person. He sat on the motorcycle ready to escape with his colleague while the co-accused Adeel was the one who had the pistol. Prima facie, common intention, cannot be excluded at this preliminary stage. Contrary to the instructions that have been given by the applicant to his counsel, the record shows that the applicant is also involved in similar crimes.

5. Counsel is correct that no identification parade was held. However, upon a tentative assessment it seems that an identification parade was not required as the robbers were arrested soon after the commission of the crime and in the presence of the complainant. The complainant, on the previous date of hearing, had come to court and categorically confirmed that the applicant was one of the robbers and that he was caught soon after the crime.

6. Counsel is also correct that the punishment of the offence falls within the non-prohibitory clause of section 497 Cr.P.C. However, the grant of bail in such cases is a rule and dismissal an exception. In **Tariq Bashir vs The State (PLD 1995 SC 34)** it has been explained in great detail, that if the punishment of an offence falls within the non-prohibitory clause, the rule is grant of bail but that is not a right and for exceptional and extraordinary reasons bail may be denied. Keeping in view the exponential rise in street crime in the city which has led to a sense of fear, as also the past crime record of the applicant and the fact that the complainant, a completely neutral person, has with conviction stated that the applicant is one of the two robbers; I am inclined to treat this case as an exception to the rule enunciated in *Tariq Bashir*. On balance, it would be safer for the society at large if the applicant is kept confined in prison till the final outcome of his trial.

7. The bail application is dismissed.

JUDGE