

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2603 of 2023
&
Criminal Bail Application No. 2604 of 2023

Date	Order with signature of Judge
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For hearing of bail application

07.12.2023

Mr. Khalid Hussain Chandio advocate for the applicants / accused in both bail applications

Mr. Saleem Akhtar Buriro, Additional PG

Complainant Jan Muhammad present in person

The applicants Muhammad Arshad and Gul Ameen seek indulgence of this Court against the order dated 07.11.2023 passed by the learned Sessions Judge Malir Karachi in FIR No. 1103/2023 & 1104/2023 for the offenses under Section 397/353/324/34 PPC & under Section 23(i) (a) SAA, 2013 of PS SITE Super Highway, whereby the Trial Court dismissed the post-arrest bail of the applicants on the premise that the prosecution has direct and connecting evidence against the applicants; that they were arrested at the spot and robbed amount of the complainant and unlicensed pistol was recovered from accused Muhammad Arshad and four live bullets from accused Gul Ameen.

2. Initially, the complainant narrated the fact to the police on the premise that on 19.09.2023, he was robbed by the accused of his cash amount of Rs. 99,000/-, in the intervening period police mobile reached the spot and arrested the applicants and also recovered the robbed amount as well as firearm weapon and bullets from their possession, thereafter police brought them to the police station and lodged the subject FIR against them. The applicant's bail plea has been rejected by the trial court for the aforesaid reasons.

3. It is contended by learned counsel for the applicant that the applicants have been falsely implicated in this case by the Police; there is apparent malafide on the part of the police; the applicants were picked up by the Rangers officials and after two days their custody was handed over to the police, who booked them in a false case. He has further contended that during the purported police encounter, neither the police sustained injuries nor any bullet hit to police mobile and the case of the applicants requires further inquiry. He lastly prayed for allowing the instant Criminal Bail Applications.

4. On the other hand learned Addl. P.G. submitted that the learned Trial Court has rightly dismissed the bail to the applicants and also

opposed the bail applications and submitted that applicants/accused were arrested on the spot and robbed amount and unlicensed pistols were also recovered from their possession. He further argued that during the firing present applicants/accused sustained injuries, which shows that such an encounter took place, therefore, applicants/accused are not entitled to the concession of bail. He further contended that a trend has developed nowadays that eye-witnesses sometimes take a somersault and give statements that are different from the prosecution case and sometimes file affidavits also at the stage of hearing of bail applications of accused persons to creating doubt in the case of prosecution to enable the accused to get bail. He added that the Courts have to be very careful in such cases and see that bail applications are disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the trial Court.

5. I have heard learned counsel for the applicants and complainant, who is present in person and the learned Addl. P.G., and have also examined the material available on record, particularly the police papers submitted by learned Addl. P.G.

6. At the very outset, the complainant Jan Muhammad, who is present in person, agreed to the disposal of this bail application on the terms that he has no grievance against the applicants/accused as such he has no objection if the bail is granted to the applicants. The aforesaid stance has been objected to by the learned Addl. P.G

7. From the perusal of the contents of FIR, it appears that the applicants/accused were arrested at the spot and robbed amount of Rs.99,000/- and unlicensed pistols were recovered from their possession. However, it is surprising to note that the complainant has recoiled from the statement made by him before the Police as well as in the F.I.R with the narration that he could not identify the applicants who were wearing helmets at the time of the alleged incident and has no objection if the bail is granted to the applicants.

8. It is also noted in the impugned order that during the hearing of the bail plea of the applicants, the complainant had given no objection to granting bail to the applicants today is the same position. It is also noted that the trial court observed that during the exchange of firing, the present applicants/accused sustained firearm injuries at the time of the incident. Though F.I.R and police investigation do not so suggest rather it is disclosed that they sustained injuries at the hands of police who hit the police vehicle to the accused while arresting them. Prima facie these factual controversies cannot be resolved in bail matters to thrash out the

guilt of the applicants, which is the function of the learned trial Court, as the applicants have made specific allegations of enmity and malice on the part of the Police.

9. The investigation in this case has been completed and the final charge sheet has been submitted before the trial Court. Therefore, the applicants shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if they are enlarged on bail. The guilt or innocence of the applicants is yet to be established in terms of the statement of the complainant who has refused to say against the applicants on the plea that at the time of the alleged incident, they were wearing helmets.

10. In view of the above statement made by the complainant in Court, this Court is left with no option but to observe that the case of the applicants requires further inquiry. Resultantly, without touching the merits of the case, the applicants are admitted to post-arrest bail in FIR No. 1103/2023 subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) each; and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The applicant Muhammad Arshad is also admitted to post-arrest bail in crime 1104/2023 for the offense under Section 23(i) a SAA, 2013 of PS SITEe Super Highway, subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail applications stand disposed of in the above terms. The trial Court is directed to conclude the trial within two months positively without fail and if the charge is not framed the same shall be framed on the next date of hearing.

11. It is clarified that the observations made herein are tentative which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits under law.

JUDGE