

IN THE HIGH COURT OF SINDH AT KARACHI**Crl. Bail Application No. 2560 of 2023****Crl. Bail Application No. 2561 of 2023****Crl. Bail Application No. 2562 of 2023**

Applicant : Usman
through Mr. Musad Ahmed Junejo, Advocate

Respondent : The State
through Mr. Muhammad Iqbal Awan, Addl.P.G.

Complainant : Waseem Khan
through Mr. Farhan Ali Shah, Advocate

Date of hearing : 12th December, 2023

ORDER

OMAR SIAL, J.: Usman s/o Babul has three cases registered against him at the Memon Goth police station:

- i. F.I.R. No. 61 of 2023 registered under section 395 P.P.C.
 - ii. F.I.R. No. 129 of 2023 registered under section 23(1)(a) of the Sindh Arms Act, 2013.
 - iii. F.I.R. No. 131 of 2023 registered under section 23(1)(a) of the Sindh Arms Act, 2013.
2. The F.I.R. listed at (i) above was registered on the complaint of Waseem Khan. Khan reported that on 27.02.2023, he was informed by a watchman on duty at his office that eight to ten persons had broken into the office, tied up the watchman and taken away cell phones, cash, batteries and weapons.
3. The F.I.R. listed at (ii) above was registered on the complaint of A.S.I. Haji Khan on 01.05.2023. Khan recorded that while on patrol duty, he found the applicant riding a motorcycle suspicious, and when he was stopped and checked, an unlicensed pistol was recovered from him.

4. The F.I.R. listed at serial (iii) above was registered on the complaint of S.I. Sahib Khan on 04.05.2023. The allegation against the applicant was that while in custody, he had led the police to a place where one weapon (MP-5), which was stolen property of F.I.R. No. 61 of 2023, was recovered.

5. I have heard the learned counsels for the applicant, the complainant and the learned Additional Prosecutor General. My observations and findings are as follows. The three cases are so connected that all three applications will be disposed of through this common order.

F.I.R. No. 61 of 2023 registered under section 395 P.P.C.

6. To date, the applicant has not been identified by the witnesses. The challan filed in the court reveals that the complainant and his witnesses did not attend the identification parade. This is material as the complainant or the witnesses have not identified the applicant in court. The complainant was asked to be present during the hearing, but he opted not to appear and sent his lawyer. No description of the robbers has been given in the F.I.R. or the witness statements that have been recorded.

7. At the moment, what prima facie links the applicant with the crime complained of is the prosecution's assertion that he led the police to a place where the MP-5 was recovered. No document has shown me that the MP-5 recovered was the same as the one stolen. Ownership documents, arms licenses, and weapons descriptions have not been documented. I also find it rather odd that a person who is arrested for possessing a weapon would confess to a robbery committed two months before his arrest and for which the police, till that date, had no clue of his involvement. If the police had the right man, they needed to conduct a more meaningful investigation than what is on record. The police have also not obtained any record of the mobile phones allegedly stolen by the robbers. It would not have been difficult to trace them as the complainant had also given the IMEI numbers of the phones stolen from them. The learned Additional Prosecutor General and the learned counsel for the complainant have struggled to provide plausible answers. The learned counsel for the complainant has laid the entire blame for the lacunas on the police.

Regarding the non-appearance of his and his client's witnesses for the identification parade, he has also blamed the police for writing incorrect things. Why the police deliberately recorded wrong things in the challan was not explained by the learned counsel, nor was it explained why no effort was made to rectify the error to date.

F.I.R. No. 129 of 2023 registered under section 23(1)(a) of the Sindh Arms Act, 2013.

8. The 9 mm pistol ostensibly recovered from the applicant has been seized. The applicant does not have a crime record, nor is there any report that the weapon has been used in any crime. I also find it challenging to understand how a police party on regular patrol duty, without any information of an offence, zeros down on a particular motorcycle on the road and figures out that the person riding it is suspicious. If there is anything suspicious, it is the police's claim of doing so. In this case, I am inclined to give the applicant the benefit of the doubt created in the case discussed above.

F.I.R. No. 131 of 2023 registered under section 23(1)(a) of the Sindh Arms Act, 2013.

9. There is a strong argument that this F.I.R. should not have been registered. The weapon recovered in this case is the recovery of the stolen goods in F.I.R. No. 61 of 2023. In the circumstances, the registration of this F.I.R. may amount to double jeopardy, as the recovery made in this case supports proving the earlier case.

10. Given the above observations, I am inclined to admit the applicant on bail in all three cases because his case is one of further inquiry. The applicant is therefore admitted to post-arrest bail subject to his furnishing solvent sureties of Rs. 200,000 in each case and P.R. Bonds of the same amount to the satisfaction of the learned trial court.

JUDGE