

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2590 of 2023

Date	Order with signature of Judge
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For hearing of bail application

**22.12.2023**

Mr. Ghulam Muhammad Khan Jadoon advocate for the applicant / accused

Mr. Talib Ali Memon, Assistant PG alongwith IO/SI Ahsan-ul-Haq PS Manghopir Karachi

Complainant Sharifullah Khan present in person

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The applicant Hamza Khan has filed the bail application under Section 497 Cr.P.C in FIR No.764/2023, under Sections 393/394/34 PPC registered at P.S. Manghoipr. His earlier bail plea has been rejected by the trial Court vide order dated 28.10.2023 on the premise that the applicant along with his accomplice came on a 125 motorbike and snatched a mobile phone from the son of the complainant, during resistance co-accused fired upon him, resultantly, complainant's son received bullet injury and escaped from the spot. Further statements of witnesses recorded under Section 161 Cr.P.C. supported the prosecution case. No malafide or enmity on the part of the complainant or police for involving the applicant had been brought on record.

2. Learned counsel for the applicant has argued that the applicant / accused is innocent and has falsely been implicated in this case. It is further stated that the FIR was/is delayed for 06 days; that neither the crime weapon nor the alleged robbed mobile was recovered from the applicant, therefore, in the absence of such incriminating material how did the son of the complainant receive an injury at the time of the alleged incident in terms of Section 393 PPC, therefore, the applicant / accused is entitled for grant of bail. It is further stated that the complainant mentioned in the FIR that several people gathered at the time of the incident, but no single private independent witness mentioned by him has been cited or examined by the Police, which is a clear violation of Section 103 Cr. P.C, and the case needs further inquiry. It is further stated that the alleged offenses do not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is further stated that no specific role of the present applicant / accused is mentioned by the complainant in the FIR, therefore, under the circumstances, Section 397 does not attract against the applicant / accused. He argued that the co-accused had been admitted on bail by the trial Court on the first day of remand being juvenile and the case of the applicant / accused is on a similar footing as he is under 18 years age. In support of

his contentions, he relied on the case of *Ghulam Abbas v. The State* (2002 P. Cr.L.J. 939). Hence prayed for the grant of bail for the applicant / accused.

3. Learned APG assisted by the complainant who is present in person opposed the grant of bail to the applicant / accused. It is argued that the applicant / accused was arrested on the pointation of the complainant. He next argued that the case of the present applicant is on different footings to the case of the co-accused who was admitted on bail by the trial Court; He further contended that sufficient material available on record to connect the applicant / accused in this offence, hence prayed for the dismissal of bail application.

4. I have given my anxious consideration to the arguments advanced on behalf of learned counsel for the parties and perused the record.

5. It appears from the record that the applicant / accused has not been named in the FIR which was lodged against unknown persons. However, the applicant has been arrested in another case, and during interrogation, he admitted his guilt and showed himself indulging in the subject crime. Further, the complainant's son during interrogation identified the applicant in the police lockup. The bail cannot be refused based on vicarious liability; unless it is shown through positive evidence that indeed co-accused played a role in the crime in question even otherwise co-accused has been admitted on bail. Additionally, the accusation against the applicant in the FIR is that he robbed the cell phone of the son of the complainant and was injured at the hands of a co-accused who was allegedly sitting on the rear seat of a bike and purportedly fired upon the victim but the son of the complainant remained silent for six days and after much delay, police called him in the police station to identify the applicant inside the police lockup. The contents of the FIR show that the accused was empty-handed and had not played any active/overt act in the commission of the offense. It would be for the trial Court to examine the evidence and determine the effect of the snatched mobile phone of the son of the complainant by the applicant. At this stage, I feel that prima facie, a case for grant of bail has been made out.

6. The applicant is in custody, the case has been challaned and the applicant / accused is no more required for further investigation, no purpose would be served to keep him in jail for an indefinite period, therefore, the applicant has been able to make out a case for grant of bail. Accordingly, the instant bail application is allowed. The applicant is granted post-arrest bail in the aforesaid crime subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

7. The trial Court is directed to examine the witnesses on the date of hearing so fixed by the trial Court and conclude the trial within two months and if the charge is not framed the same shall be framed. MIT-II is directed to seek compliance of this order within time.

8. 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

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