

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

**Criminal Bail Application No. 1193 of 2023**  
[Nasir Rasheed Vs. The State]

Applicant: Nasir Rasheed son of Abdul Rasheed.  
Through Mr. M. Bilal Ahmed, Advocate.

Respondent: The State, through Mr. Khadim Hussain,  
Additional Prosecutor General Sindh.

Date of hearing: 14.07.2023  
Date of order: 14.07.2023

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**Arshad Hussain Khan, J:-** The applicant/accused seeks post arrest bail in F.I.R. No. 241 of 2023 registered at PS Shahrah-e-Noor Jehan, Karachi, under Section 392/397/381/109/34 P.P.C.

2. Briefly stated the facts as per contents of the F.I.R. are that on 28.04.2023 at about 12.30 p.m. the complainant left his younger brother Umair at the shop and went to offer Jumma prayer. At about 01.04 p.m. the complainant received a phone call from his younger brother Umair who informed that robbery has taken place at the shop. It has been informed that 03 young robbers, wearing shalwar kameez, identifiable by face, entered into the shop and on the gunpoint looted cash Rs.2,72,000/- and 12 mobile phones, IMEI Numbers whereof have been mentioned in the FIR, from the said shop and fled away. Upon receiving such information the complainant immediately reached at his shop and on checking he found that some other mobile phones were also missing including above mobile phones, however, he is unaware about the IMEI Numbers of the said mobile phones.

3. Learned counsel for the applicant/accused has contended that the applicant/accused [student of class XI] is innocent and has been falsely implicated by the complainant in this case and he has not committed any crime. It is also contended that the FIR has been lodged against unknown persons and no identification parade has been held before any Magistrate although the FIR was lodged on 28.04.2023 whereas the applicant was shown arrested on 12.05.2023. He has further argued that applicant/accused was called by the police for his statement as at one time he used to work in the complaint's shop, however, when the police illegally detained the applicant and sought illegal gratification for his release, the applicant's father on 11.05.20023 filed Cr. Misc. Appl. No.992 of 2023 before the Court of District and Sessions Judge/Justice of Peace, Karachi (Central) upon which on the next date, that is, 12. 05.2023 the applicant was shown arrested by the police in the above crime. It is further contended that despite the FIR is

against the unknown persons, no identification parade has been held before any Magistrate in this crime, which creates doubt in the prosecution case. It is further contended that the alleged recovery of two mobile phones have been foisted upon the applicant/accused. It is contended that co-accused has already been granted bail in this crime by the 1<sup>st</sup> Additional Sessions Judge, Karachi, [Central], vide order dated 16.05.2023, hence the applicant/accused is also entitled for concession of bail on the rule of consistency. It is urged that the alleged video/CCTV footage produced by the complainant has not been sent for forensic test, which too creates doubt in the present case and requires further inquiry. He has lastly prayed that applicant/accused may be admitted to bail.

4. Learned Additional Prosecutor General very candidly stated that the present case is of further enquiry.

5. I have considered the arguments advanced by learned counsel for the applicants/accused and learned Addl. PG as well as perused the material available on the record.

6. The record shows that the applicant/accused is neither a previous convict nor hardened criminal. Besides, co-accused namely; Ali Jan son of Aslam has been granted post-arrest bail by Ist Additional District & Sessions Judge, Karachi [Central]. In criminal cases rule of consistency applies when the accused has identical role with the co-accused then he is entitled for the same relief, which is granted to the co-accused. In the case in hand, co-accused having similar role has been granted bail, as such, the present applicant/accused is also entitled for the same treatment as per rule of consistency. Reliance in this regard can be placed on the case of *Pir Bakhsh v. The State and others* [2010 MLD 220]. Moreover, in the present case, though the FIR was registered against the unknown persons yet upon arrest of the present applicant/accused there appears no identification parade has been held. It is well settled that in cases where the names of the culprits are not mentioned, holding test of identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State* [1997 SCMR 971]. Nonetheless, truth or otherwise of the charges levelled against the applicant/accused could only be determined at the conclusion of the trial after taking into consideration the evidence adduced by both the parties. It is also a settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. Moreover, the applicant/accused has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt.

In the circumstances, it appears that the present case is of further enquiry and also does not fall within the prohibitory clause. In the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488), it has been observed that where a case falls within non-prohibitory clause the concession of grant of bail must favorably be considered and should only be declined in exceptional cases.

7. In the instant case, no exception has been pointed out by the prosecution specially in the circumstances when applicant/ accused is first offender and nothing contrary to the same has been produced, thus I do not find any exception in the present case and for this reason, the applicants/accused was admitted to bail by my short order dated 14.07.2023.

8. 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 applicant/accused misuses the bail, then the trial court would be competent to cancel the bail of the applicant/accused without making any reference to this court.

Above are the reasons of my short order dated 14.07.2023

JUDGE