

THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No.909 of 2023

For hearing of Bail Application.

Applicant : Jahangir Khan through Hafiz
Mumraiz Hussain, Advocate.

The State : Through Ms. Amna Ansari,
Additional Prosecutor General Sindh

Date of hearing : 21-07-2023

Date of order : 21-07-2023

FIR No.27/2023
U/S 489-C r/w Sec.489-B, PPC
P.S. Chakiwara

ORDER

Adnan Iqbal Chaudhry J. The Applicant prays for post-arrest bail in the aforesaid crime. Earlier, his bail application was dismissed by the VIII Additional Sessions Judge Karachi-South by order dated 28.02.2023. Thereafter, he moved Bail Application No.537/2023 before this Court, but the same was withdrawn on 06-04-2023. As pointed out by learned counsel for the Applicant, that bail application was withdrawn by moving an urgent application before the date fixed for its hearing and before notice thereon was served, i.e. without advancing any argument thereon inasmuch as by that time a challan dated 08-03-2023 had been submitted and the Applicant intended to move a fresh bail application before the trial court. However, that second bail application was also dismissed on 10.04.2023 by the Additional Sessions Judge observing that the challan did not present any fresh grounds for bail. Where the earlier bail application before this court was withdrawn in the manner aforesaid, for all intents and purposes this is the Applicant's first bail application before this Court. Resultantly, I do not agree with the submission made by the learned APG Sindh that the Applicant cannot urge grounds taken in the withdrawn bail application.

2. As per the FIR, the complainant/ASI on police patrol received information from a spy that two persons at a certain location can be found carrying counterfeit currency; that on reaching the spot, on the pointation

of the spy, and on the reluctance of private persons to act as witnesses, two persons sitting on a motorcycle were searched by the police party to recover from the pocket of the Applicant 22 counterfeit currency notes of Rs.5000/- each.

3. Per learned counsel, the Applicant was a private security guard and a part-time Bykea rider, who was at the relevant time giving a ride to the co-accused, who was the son of his supervisor at the security company; that the currency notes were recovered from the co-accused, but were foisted on the Applicant when he refused to become witness to the search. On the other hand, learned APG Sindh opposed the bail by submitting that a report obtained from the State Bank of Pakistan had verified that the currency notes were counterfeit; and that, variation in the stance being taken by the Applicant did not inspire any confidence in his defense.

4. Heard learned counsel for the Applicant and the learned APG Sindh and perused the record.

5. The FIR was lodged only for the offence under section 489-C PPC viz. for possessing counterfeit currency intending to use the same as genuine, and which is a bailable offence where bail is to be granted as a right. Section 489-B PPC viz. the offence of selling, buying, receiving or trafficking counterfeit currency, which is a non-bailable offence, was subsequently added while submitting the challan. Though it is alleged that the Applicant was found in possession of counterfeit currency, neither the FIR nor the challan allege that he was also found selling, buying, receiving or trafficking the same, hence the non-bailable offence of section 489-B PPC becomes doubtful. In somewhat similar circumstances the Supreme Court granted bail in the case of *Sami Ullah v. The State (2021 SCMR 729)* after observing that the trial court had yet to determine whether section 489-B PPC was attracted along with section 489-C PPC.

6. Where no private person had witnessed the search and the alleged recovery of counterfeit currency made from the Applicant, his plea that the counterfeit currency was foisted on him as alleged, cannot be ruled out at this stage. The case against him is one of further inquiry falling within the ambit of sub-section (2) of section 497 CrPC.

7. The Applicant does not have a criminal record. He is no longer required for investigation. Therefore, his continued incarceration serves no purpose.

8. For the foregoing reasons the Applicant Jahangir Khan is granted bail in FIR No. 27/2023 subject to furnishing solvent surety in the sum of Rs.200,000/- [**Rupees Two Hundred Thousand only**] alongwith P.R Bond in like amount to the satisfaction of the trial court.

Needless to state that the observations herein are tentative and shall not be construed to prejudice the case of either side at trial.

JUDGE

*PA/HYDER