

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 1527 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

31.07.2023

Mr. Abdul Rehman, Advocate for the applicant
Mr. Hussain Bux Baloch, Addl. P.G.

1. Applicant Zain son of Muhammad Rafiq is seeking bail after arrest in FIR No. 62/2023 lodged under Section 393, 397, 34 PPC at P.S. Pakistan Bazar, Karachi.
2. The allegation against the applicant/accused is that on 16.02.2023 at about 2130 hours he in conjunction with other malefactors committed robbery/dacoity.
3. It is inter alia contended by the learned counsel for the applicant/accused that the applicant is not nominated in the FIR which fact is sufficient for grant of bail and mere severity of offence is not a ground of declining the bail plea of applicant/accused unless it is proved.
4. On the other hand, learned APG contended that applicant/accused has committed an offence which is against the society, therefore, he is not entitled for concession of bail. He further contended that the bail plea of the applicant/accused had been declined twice by the learned trial Court and the applicant/accused moved this bail plea without any fresh ground, therefore, the applicant/accused is not entitled for bail.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It is an admitted fact that applicant/accused is neither named in the FIR nor robbed belongings of the complainant was recovered from his possession. It settled principle of law that mere severity of offence is not a ground for declining the bail plea of any culprit. It is clear that allegation can only be determined at the conclusion of the trial, where deeper appreciation of evidence will be made out whether the accused is involved in the case or not. The allegations by themselves would not constitute bar for the grant of bail in peculiar circumstances of the case. Object of trial is to make an accused to face the trial and not to punish an under trial prisoner. Furthermore, basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bars. The prosecution has to explore every avenue to prove the guilt of applicant/accused including the element of mens rea. The basic concept of bail is that liberty of an innocent person is not to be curtailed unless and until proved otherwise. Deep appraisal and detailed discussion of evidence is not permissible and court should not cross the barrier of permissible limits of law while making tentative assessment of the evidence at the bail stage. The exercise of this power should, however, be confined to the cases in which a good prima facie ground is made out for the grant of bail in respect of the offence alleged.

6. As a result therefore, this bail application is allowed. Applicant Zain son of Muhammad Rafiq is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

7. Before parting, I would like to further observe that if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court.

JUDGE

Aadil Arab