

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.325 of 2023

Date	Order with signature of Judge
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For hearing of bail application

19.7.2023

Mr. Abdul Mutalib, advocate for the applicant
Mr. Siraj Ali Khan, Additional PG
S.M. Shuja Abbas, advocate for the complainant

Through this bail application, the applicant / accused has assailed the order dated 28.12.2022, whereby his bail application was rejected by the learned XII-Additional Sessions Judge Karachi West in Criminal Bail Application No.6123/2022.

2. It appears from the facts of the FIR that on 20.5.2022, three armed accused persons arrived at Seena Education Hospital, where the complainant along with his friends including Manzoor Ali was sitting, the armed accused persons while committing robbery from the complainant party, upon which Manzoor Ali (friend of the complainant) resisted, on such resistance accused opened fire which was hit to Manzoor Ali. Meanwhile, the complainant party apprehended one of them, who disclosed his name as Farhan and the name of the escapee accused as Siraj and Inayat. On 24.5.2022, the injured passed away; a report of the incident was lodged with the police.

3. Learned counsel for the applicants / accused has contended that the applicant / accused is innocent and has been falsely involved in the instant case; that his role has not been assigned in the FIR; that the name of the applicant / accused was disclosed by the co-accused Farhan before the police as such the statement of co-accused before the police has no value. He further contended that in this crime no identification parade of accused Siraj was conducted before the Judicial Magistrate. He, therefore, prayed for allowing this bail application.

4. Learned Additional PG assisted by the learned counsel representing the complainant has opposed the bail plea of the applicant on the ground that the co-accused has disclosed the name of the present applicant / accused, hence he is not entitled to the concession of bail.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. From the perusal of the FIR, it appears that it has been lodged against one Farhan and unknown accused persons who attempted to commit robbery on the force of a weapon, however, there is no description of the applicant in the FIR. The record does not show that any implicating material evidence has been recovered from the applicant/accused.

7. From the record, it transpires that the name of the applicant/accused has been included in the case upon the statement of co-accused recorded under section 161 Cr.P.C. The Supreme Court in the case of *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of the statement of co-accused made before the police in light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements of co-accused recorded by police during the investigation are inadmissible in the evidence and cannot be relied upon.

8. Similar view has been reiterated by the apex Court in the case of *Raja Muhammad Younas v. The State* [2013 SCMR 669], wherein it has been held as under:

“2.After hearing the counsel for the parties and going through the record, we have noted that the only material implicating the petitioner is the statement of co-accused Amjad Mahmood, Constable. Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused.....”

9. It would not be out of place to mention here that evidence of an accomplice is ordinarily regarded suspicious, therefore, the extent and level of corroboration has to be assessed keeping in view the peculiar facts and surrounding circumstances of the case.

10. In the present case, no identification parade has been held in so far as the applicant/accused is concerned even though the complainant mentioned in the FIR that he had seen the unknown assailants. It is well settled that in such cases holding of identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State* [1997 SCMR 971], wherein the Supreme Court of Pakistan, inter alia, has held:-

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits.....”

11. The record does not show that the applicant/accused is a previous convict or hardened criminal.

12. The applicant 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 bars for an indefinite period pending determination of his guilt.

13. It is well settled that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offense. From the tentative assessment of the evidence in the hand of the prosecution, it appears that there is hearsay evidence against the present applicant/accused, while it is yet to be determined if he is involved or not, which is possible only after the recording of the evidence by the trial Court.

14. In view of the peculiar facts and circumstances of the case, I am of the tentative opinion that prima facie, the applicant/accused has succeeded to bring his case within the purview of further inquiry and as such is entitled to bail and for this reason, the applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court.

15. Needless to mention here that observation made in this order is tentative 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 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.

JUDGE

Zahid/*
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