

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

Criminal Bail Application No. 1474 of 2023

Date	Order with signature of Judge
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For hearing of bail application

21.8.2023

Mr. Shahzad Qamar Abbas, advocate along with the applicant.
Mr. Muntazir S. Mehdi , APG a/w I.O/SI Muhammad Arif of P.S Shahr-e-Faisal.

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No. 192/2023, registered under Section 397/34 PPC at Police Station Shahr-e-Faisal, Karachi. The earlier bail plea of the applicant has been declined by the learned XIVth Additional Sessions Judge (East) Karachi vide order dated 15.06.2023 in Cr. Bail Application No. 3206/2023.

2. It is alleged that on 07.03.2023 at about 0845 hours in the morning, the complainant was waiting for his bus at COD Chowk when two persons came on the bike who were armed with pistols; the said persons showing pistols snatched the wallet containing a sum of Rs. 50,000/- cash driving license and other documents from the complainant as well as a cell phone as well as an important document.

3. The applicant being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicant has been falsely implicated in the case. Learned counsel for the applicant submitted that the applicant is not a habitual offender however he has been booked in the blind FIR by the police to settle their vendetta. He has further submitted that the involvement of the applicant in the commission of the alleged offense is yet to be determined and the conclusion of the trial does take a long time whereas he is behind the bar since his arrest. He pointed out that it is now well settled that an accused cannot be kept in jail as punishment merely on the ground that he is directly charged for an offense falling under the prohibitory clause of section 497 Cr.P.C., because a mistaken relief of bail may be repaired by convicting the accused if proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. He emphasized that to curtail the liberty of a person is a serious step in law; therefore, this exercise shall not be carried out in the vacuum. He

argued that there are material contradictions and discrepancies in the identification parade and/or statements of the prosecution witnesses, which have been overlooked by the trial while refusing bail to the applicant. Contends that the identification parade was conducted without observing the instructions/guidelines enunciated by the superior courts, therefore, it cannot be relied upon at the bail stage. Contends that no recovery has been effected from the applicant, which creates doubt in the prosecution case. Contends that on the same set of evidence, the co-accused has been admitted to bail by the trial court, as such, the applicant also deserves the same treatment to be meted out, he pointed out that the identification parade of the present applicant was conducted at the belated stage after his arrest in another case. Per learned counsel nomination of the accused before the identification parade, diminishes the sanctity of such Test Identification Parade and its evidentiary value shall be determined by the trial court therefore, the applicant cannot be saddled with the criminal liability of committing alleged dacoity. He lastly prayed for allowing the bail application.

4. Learned APG has submitted that the tentative assessment of material available on record, prima facie leads to a conclusion that there are no reasonable grounds exist to believe that it is a case of further inquiry. Learned APG emphasized that punishment provided under Section 395 PPC is for 10 years which falls within the prohibitory clause of Section 497 (1) Cr. P.C, He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. The identification parade of the petitioners was held on 18.3.2023. The said Judicial Magistrate categorically stated that the proceedings of the identification of the applicant were conducted and the complainant was summoned he identified the applicant and after completion of the identification parade, he prepared the report and signed the same.

7. So far as the argument of the learned counsel for the applicant that the identification parade was conducted without observing the guidelines enunciated by the superior courts is concerned, suffice it is to state that the process of identification parade has to be carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an unchangeable ritual, inconsequential non-performance whereof, may result into failure of the prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on the

case of Tasar Mehmood v. The State (2020 SCMR 1013). Even otherwise, it is settled law that holding of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in the evidence to suggest that he is deposing falsely, then even the non-holding of the identification parade would not be fatal for the prosecution case. Reliance is placed on the case of Ghazanfar Ali v. The State (2012 SCMR 215) and Muhammad Ali v. The State (2022 SCMR 2024).

8. Prima-facie, in the present case, the features of the applicant were mentioned by the complainant and recorded in the FIR. The applicant after having been arrested in another FIR was included in an identification parade and was positively identified by the complainant. Nothing has been placed on record to establish that the identification parade was not carried out under the law. Such an identification parade was carried out within 6 days of the applicant having been arrested. Prima-facie, the applicant is connected with the commission of a crime entailing punishment of more than 10 years. Regarding such offenses, negative language is couched in Section 497(1), Cr.P.C.

9. After having eloquently perused the memo of identification proceedings, prima facie, no anomaly is discernable to extend the concession of bail to the applicant at this stage.

10. So far as the argument of learned counsel for the applicant that on the same set of evidence co-accused has been admitted to bail is concerned, the same is misconceived. The case of the applicant is distinguishable from that of the co-accused for the reason that complainant failed to identify the co-accused in the identification parade. The said tentative assessment of the learned Trial Court is neither arbitrary nor capricious and the same is based upon correct appraisal of the record.

11. In view of the above, prima-facie, there exist reasonable grounds to support the belief that the applicant might be liable for the offense he has been charged with. The instant bail application is without merit and is therefore dismissed.

12. The learned trial Court will ensure that the trial of the applicant is concluded within two months. The office will also share a copy of this order with the learned MIT to seek compliance with the aforesaid direction in time.

13. Needless to mention that the observations recorded in the instant petition are based on the tentative assessment of material produced by the prosecution, which ought not to prejudice the proceedings before the learned trial Court.

JUDGE

Shahzad/*