

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.754 of 2023

Abdullah  
applicant through:

Mr. Qazi Inamullah, advocate

The State,  
through:

Mr. Muhammad Iqbal Awan, APG  
a/w ASI/I.O Moosa Khan, P.S Orangi

Azhar Ali,  
complainant through:

Nemo

**Date of hearing:  
& order :**

**08.08.2023**

## ORDER

**Adnan-ul-Karim Memon, J.** – Applicant Abdullah seeks post-arrest bail in F.I.R No.24/2022, registered under Sections 393/397/398/34 PPC at PS Orangi Town, Karachi. His earlier bail plea has been declined by the trial Court vide order dated 29.03.2023.

2. Accusation against the applicant is that he attempted to rob the complainant for that he raised a hue and cry, upon which people attracted and out of them one was apprehended alongwith pistol on the spot while the applicant managed to escape leaving his motorcycle. The apprehended accused disclosed his name as Abid Ali and also named the applicant as his accomplices and FIR of the incident was lodged with PS Orangi Town, Karachi to the above effect.

3. It is, inter alia, contended that the applicant is innocent and has nothing to do with the alleged offence; that the FIR was lodged with delay of days without any plausible explanation; that feature or *Hulia* of the applicant is not mentioned in the FIR; that the complainant has not disclosed the source of information about the identity of the applicant; that no incriminating article has been recovered from the applicant;

4. Conversely, learned A.P.G for the State opposed the bail application.

5. Heard learned counsel for the applicant/accused as well as learned APG for the State and perused the material available on record.

6. Perusal of the record reveals that the applicant was not arrested on the spot and no recovery was effected from him when he was arrested in the aforesaid crime at the statement of co-accused. The Supreme Court in the case *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 investigation are inadmissible in the evidence and cannot be relied upon. A 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.....”*

7. 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.

8. In the present case, no test-identification parade has been held in so far as the applicant/accused is concerned. It is well-settled that in cases where the names of culprits are not mentioned, holding of test 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.....”*

9. During the investigation, the prosecution could not collect any material to show that applicant has any nexus with the alleged offense. In FIR, Sections 393, 397 and 398 PPC have been applied. Section 393 PPC pertains to an attempt to commit robbery which is punishable with R.I for a term that shall be extended upto 07 years whereas Section 398 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than 07 years. Keeping in view the punishments provided in the above Sections, while deciding the bail application lesser sentence out of alternate sentence may be taken into consideration for determining whether the case falls under the prohibitory clause of Section 497(1) Cr.P.C, I am of the considered view that case of the applicant requires further inquiry as there are no reasonable grounds to believe that he has committed an offense punishable with death, imprisonment for life or 10 years as the prosecution could not collect any material against the applicant to show that he has committed an offense which falls within the prohibitory clause of Section 497 (1) Cr.P.C.

10. The record shows that the applicant/accused is not a previous convict nor a hardened criminal. Moreover, the applicant/accused has been in continuous custody

since his arrest and he is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping them behind bars for an indefinite period pending the determination of his guilt. 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 applicants/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.

11. In view of the peculiar facts and circumstances of the case, I am of the 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.

12. For the foregoing reasons, the applicant is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R Bond in the like amount to the satisfaction of the trial Court.

13. Before parting with this order, it is observed that the observations made in this order are tentative in nature and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, if the applicant/accused during proceedings before the trial Court, misuses the concession of bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

JUDGE