

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1279 of 2023

Date	Order with signature of Judge
------	-------------------------------

1. For order on office objection at 'A'
2. For hearing of bail application

07.8.2023

Mr. Nisar Ahmed Narejo advocate alongwith Mr. Muhammad Ramzan advocate for the applicant/accused
Mr. Muntazir Mehdi, Additional PG alongwith ASI Aziz-ur-Rehman PS Bin Qasim Karachi

Through this criminal bail application, the applicant seeks post-arrest bail in Crime No.183/2023 registered under Section 392,397,34 at PS Bin Qasim Karachi after his bail plea has been declined by learned III-Assistant Sessions Judge Malir Karachi vide order dated 10.6.2023.

2. Brief facts of the prosecution case are that on 22.5.2023, when the complainant along with his friend Muhammad Fayaz after meeting with his friend Saeed returning from Benazir Society Port Qasim Karachi towards his house at Data Nagar, when they reached service road Port Qasim near vacant plot at 2105 hours, then suddenly two persons stopped them and they took out pistols and snatched cash of Rs.9500/-, photocopy of CNIC from the complainant and snatched Rs.2500/-, photocopy of NIC and different documents from his friend Muhammad Fayaz, meanwhile they saw two police personnel who were coming towards them, on the resistance they apprehended one accused, while other accused to rescue his companion made a fire upon the complainant and his friend, but the same was hit to his companion and the accused was injured. On inquiry, the accused disclosed his name as Javed son of Muhammad Murad, and recovered from him one pistol and cash looted from the complainant and his friend. Subsequent thereto, the FIR of the incident was registered by the complainant namely Ali Jan on 23.5.2023.

3. Learned counsel for the applicant has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case by the complainant in connivance with police; that the applicant/accused has nothing to do with the alleged offense, hence his false implication cannot be ruled out; that facts are that on 20.5.2023 the police forcibly took away the applicant/accused from Gharo District Thatta and later on booked him in this false case, in this regard Ghulam Rasool brother of accused moved an application to the SHO of PS Gharo for release of the

applicant/accused. He next argued that the place of the alleged incident is a highly thickly populated area, but the police/complainant has failed to arrange any single independent eye witness of the alleged incident; that nothing was recovered from the possession of the applicant/accused. He, therefore, prayed for allowing the instant bail application.

4. Learned Additional PG has strongly opposed the grant of bail to the applicant/accused on the ground that the applicant/accused is nominated in the FIR he has been arrested red-handed at the spot and recovery has also been effected. He contended that the allegation made by the applicant against the police officials of foisting a false case is baseless as no enmity with the police officials or malafides on their part has been alleged by the applicant. Regarding the absence of independent witnesses, he contended that bail cannot be granted on this ground. It was urged that the offense committed by the applicant falls within the prohibitory clause of Section 497 Cr.P.C.

5. I have heard the learned counsel for the applicant / accused and the learned Additional Prosecutor General Sindh for the State, and have also gone through the record.

6. In the present case, no test-identification parade has been held 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.....”

7. During the investigation, the prosecution has applied in FIR Sections 393, and 397 PPC. 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 397 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 an 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 the case of the applicant requires further inquiry on the premise that he was not arrested at the spot, however, he has shown to have been arrested from jungle in injured condition and subsequently

alleged recovery has been made from him which factum needs to be looked into by the trial Court whether he received injury at the hands of his accomplice, police or otherwise and whether the alleged recovery needs to be verified from the complainant that could be done after recording the statement of the complainant.

8. 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, the alleged recovery is yet to be confronted to the applicant during trial.

9. As far as the contention of learned APG that the applicant is involved in other criminal cases is concerned, it would suffice that mere involvement in other cases would not disentitle her/him from the relief of bail if she/he otherwise succeeds in bringing his/her case within the meaning of further inquiry. Needful to add that liberty of a person is a precious right that has been guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973. Hence in cases, where there is a slight tilt towards the grant of bail, the same needs to be preferred over letting one to confine in jail for an indefinite period in the name of trial when the conclusion thereof can competently impose due punishment for such released person. Further, the learned APG has not brought on record any material that the applicant / accused has been convicted in any other case, hence, mere involvement in criminal cases cannot be ground to withhold the concession of bail in the given circumstance. Reliance is placed upon the cases of *Moundar and others v. The State* (PLD 1990 SC 934), *Babar Hussain v. State* (2020 SCMR 871), and *Muhammad Rafique v. State* (1997 SCMR 412).

10. In view of the above discussion, this is a case that requires further inquiry on the aforesaid points in my humble opinion, and I am convinced that the applicant has made out a case for the grant of bail in terms of Section 497(2) Cr.P.C.

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

12. It is hereby clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case on merits strictly under law.

JUDGE