

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1239 of 2023

Shah Meer
applicant through:

Syed Nadeem-ul-Haq, advocate

The State,
through:

Mr. Muhammad Iqbal Awan, APG
a/w SIP Shamim Ahmed, P.S Rizvia

Ali Rizwan,
complainant through:

Present in person

**Date of hearing:
& order :**

08.08.2023

ORDER

Adnan-ul-Karim Memon, J. – Applicant Shah Meer seeks post-arrest bail in F.I.R No.141/2023, registered under Sections 392/397/34 PPC at PS Rizvia Society, Karachi. His earlier bail plea has been declined by the trial Court vide order dated 01.06.2023.

2. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case; that the offense under section 397, P.P.C. is not applicable in the present case; that no crime weapon has been recovered from the possession of the applicant at the time of his arrest; that there is no independent witness of the alleged incident even though it allegedly took place in a busy area where so many people were gathered; that the guilt of the applicant requires further inquiry entitling him for bail.

3. On the other hand, learned A.P.G. assisted by the complainant vehemently opposes this application because the applicant was arrested from the hospital in injured condition; that the alleged offense is not compoundable; that sufficient evidence is available with the prosecution to connect the applicant with the commission of the alleged offense; hence, he is not entitled to the concession of bail.

4. I have considered the arguments advanced by the learned counsel for the parties and also perused the material available on record.

5. A tentative assessment record reflects that the applicant was not named in the FIR No. 141/2023 of P.S Rizvia Karachi and subsequently the complainant visited Abbassi “Shaheed Hospital to check the injured accused

wherein he saws the applicant and disclosed this factum to the police wherefrom he was arrested and FIR was lodged on 5.04.2023. The sole allegation against the applicant is that he was the accomplice of the main accused who robbed the complainant and upon resistance, the friend of the complainant fired upon the accused who allegedly sustained bullet injury and was arrested from the hospital. It is admitted position that before the incident both the parties were unknown to each other in these circumstances it was obligatory upon the investigating officer to put the applicant to an identification test through the prosecution witness as discussed supra however the investigating officer has failed to discharge his above obligatory responsibility; besides nothing has been recovered from the possession of the applicant after his arrest. 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.....”

6. The trial Court in such circumstances had to determine after recording pro and contra evidence whether the applicant was vicariously liable to acts of his co-accused or otherwise so far as registration of criminal cases is concerned, suffice it is observed, at this stage this Court is only seized the instant bail application and the effect/impact of the aforesaid criminal record against the applicant is not relevant for disposing of the instant bail application.

7. About the plea of the complainant that the rule of consistency does not apply in post-arrest bail, I rely upon the case of Kazim Ali and others versus The State and others, 2021 SCMR 2086. In the said case, the Supreme Court dispelled such a view and held that where the role ascribed to a large number of accused was general, which cannot be distinguished from each other, and technical ground because soon after their arrest they would become entitled to the concession of post-arrest bail on the plea of consistency and as such the accused persons in such case were admitted to bail.

8. The grounds agitated by the learned APG and the complainant cannot be assessed at the bail stage without recording the evidence in the matter as

such the applicant has made out a case of post-arrest bail in the aforesaid crime at this stage.

9. Against the backdrop, the case of the applicant becomes the further inquiry falling within the purview of Section 497(2) Cr.P.C. Applicant is in injured condition and is behind bars since his arrest.

10. For the foregoing reasons, this bail application is accepted. Consequently, applicant Shah Meer is admitted to post-arrest bail in the cited FIR subject to his furnishing bail bond in the sum of Rs.100,000/-(Rupees One hundred thousand only), with one surety in the like amount to the satisfaction of the learned trial Court.

JUDGE