

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1504 of 2023

| Date | Order with signature of Judge |
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For hearing of bail application

**31.8.2023**

Mr. Shah Imroz Khan advocate and Mr. M.S. Anjum advocate for the applicant  
Mr. Talib Ali Memon, Assistant PG alongwith complainant Shahid Ali.

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Applicant Usman seeks post-arrest bail in F.I.R No.666/2023, registered under Sections 397/34 PPC at PS KIA, Karachi. His earlier bail plea has been declined by the VI-Additional Sessions Judge (East) Karachi vide order dated 27.05.2023 in Cr. Bail Application No. 2629/2023.

2. Accusation against the applicant is that on 06.05.2023 at 0200 hours, he in connivance with his accomplice robbed the complainant's son and snatched his mobile phone and cash amount of Rs.350/-, however, one of the accused was apprehended, who disclosed his name as Usman. The police also recovered one 32-bore revolver from the shirt of the accused. The FIR of the incident was lodged with PS KIA, Karachi to the above effect in time.

3. At the very outset, it has been argued by learned counsel for the applicant that the applicant has been falsely roped in the present case against the facts and circumstances; that no revolver whatsoever was recovered from the personal possession of the applicant, and contends that the learned trial Court has not properly evaluated the material available on the record, therefore, by declining bail to the applicant, a grave miscarriage of justice has been done. It is, further contended that the applicant was allegedly apprehended at the spot but no alleged robbed articles were recovered from his possession which makes the case of the applicant one of further inquiry. He submitted that the complainant has raised his no objection if the applicant is allowed bail in the case. Per learned counsel, the prosecution case has two versions and it is yet to be determined at trial as to which version is correct one put forward by the complainant and the second version given by the Investigating Officer, therefore, the case of the applicant requires further inquiry. In support of his contentions, he relied upon the case of *Mazhar Ali v. The State* (2013 YLR 1392). He lastly prayed for allowing the bail application

4. Conversely, learned A.P.G for the State has opposed the bail application and contended that the applicant is specifically nominated in the crime report and from

his possession 32-bore revolver has been recovered from his possession which is sufficient material to connect him with the aforesaid crime, therefore, he does not deserve any leniency from this Court in the terms that the offense is rampant in the society and causing loss to the public and prayed for its dismissal.

5. I have heard learned counsel for the applicant/accused as well as learned APG for the State, and complainant present in Court and perused the material available on record.

6. At the time of hearing of bail application the Court is supposed to do a tentative assessment of the material available on the record, which is different from the final appraisal and evaluation of evidence which is to be done by the trial Court which has to record evidence of witnesses.

7. Perusal of the order passed by the trial Court shows that the applicant was nominated as accused in the F.I.R., which was lodged promptly, and not only the specific role of robbing the article and recovering of 32-bore revolver from him has been imputed to him in the present F.I.R., but also it is mentioned that the public apprehended him and thrashed him out and thereafter he was brought to Police Station where case was lodged and then referred to JPMC for treatment, such medical evidence supports the prosecution case. It was also noted that at the time of the arrest of the applicant, recovery of the 32-bore revolver was made from him in such circumstances it would be the better course to examine the complainant so that the truth may come out whether he implicates the applicant in the said crime or otherwise as portrayed by the learned counsel for the applicant, as such nothing has been brought on record to say that the complainant has falsely implicated the applicant in such robbery case. So far as the exoneration by the complainant, if any, which course is to be seen by the trial Court as this Court has to tentatively assess the material placed on record, and such assertion as put forward by the learned counsel for the applicant cannot be touched at this stage.

7. In the instant case I am of the tentative view that the offense is heinous and has grave repercussions on society and there is prima facie, sufficient material to connect the applicant to the subject crime, however, the assertion of the applicant needs to be looked into by the trial Court after examining the complainant. In such circumstances, I am not convinced that any case for a grant of bail is made out at this stage. This bail application having no merit is accordingly dismissed with direction to the trial Court to examine the complainant within one month positively and if the charge is not framed the same shall be framed on the next date of hearing. However, if the complainant is not examined within time the applicant shall be at liberty to move a fresh bail application before the trial Court and the observation recorded hereinabove shall not come in his way while the decision on his fresh bail

application, if any. The compliance report shall be submitted to this Court within time.

8. The observations made hereinabove are tentative and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE