

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

Criminal Bail Application No.960 of 2023
Criminal Bail Application No.961 of 2023

Date	Order with signature of Judge
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For hearing of bail application

8.09.2023

Mr. Muhammad Shafique Abdullah advocate for the applicants
Mr. Zahoor Shah, Additional PG along with SI Aijazuddin of P.S New Karachi along with complainant Muhammad Yasin in Bail Application No. 961/2023.

Through these bail applications under Section 497 Cr.P.C., the applicants have sought their admission to post-arrest bail in F.I.R No.915 and 916 of 2022, registered under Section 392, 393, 397 and 34 PPC at Police Station New Karachi.

2. The accusation against the applicants in F.I.R No.915/2022 is that on 01.12.2022 they robbed the complainant Owais Bin Mujeeb of Rs 25,000 at gunpoint and attempted to snatch his cell phone for which he resisted and made hue and cry as such they fled away, thus subject F.I.R was registered. The accusation against the applicants in F.I.R No.916/2022 is that on the same day and time, they robbed the complainant Muhammad Yameen his cell phone, and Rs 15,000. The earlier bail plea of the applicants has been declined by the learned Vth Additional Sessions Judge (Central) Karachi vide order dated 20.04.2023 in Cr. Bail Application No. 141 and 142 of 2023 on the premise that in the Identification Parade whereby complainant of this crime/ case identified them. The identification parade in F.I.R No.915/2022 was conducted in which the complainant identified them as accused, however, the complainant in F.I.R No.916 failed to identify the applicants.

3. Learned Counsel for the applicants/accused has contended that applicants/accused are innocent and have been falsely implicated in the aforesaid cases by the police in F.I.R No.915 of 2022, through stock complainant, who is even otherwise not traceable in spite of notice to him to appear, however the Investigation officer is reluctant to produce him before this court who firstly identified them in police station and their allegedly, mock identification parade was held where he allegedly identified them as culprits, due to ulterior motives; that neither names of applicants nor any huliya or specific role has been mentioned in the FIR; that in F.I.R No.916 of 2023 no any identification parade before any

judicial magistrate has been held; that from the bare study of the FIRs, it is clearly transpired that the applicants/accused are not arrested from the place of incident or while they were committing such offence, the applicants involved in these false and fabricated cases without any evidence and recovery, therefore, the cases in hand are highly doubtful and it need further inquiry; that FIRs have been lodged against the unknown persons and as per FIR No.2016 of 2023, the complainant who is present in court has miserably failed to say that applicants are the same persons who robbed him and the prosecution to show their efficiency implicated them in the aforesaid cases.

4. Learned counsel for the applicants has pointed out that the police had already shown their arrest in FIR No. 917/2022 under sections 353/324/34 PPC R/w 7 ATA of PS New Karachi, FIR No. 918/2022 under Section 23(i)(A), SAA,2013 and FIR No. 919/2022 under Section 23(i)(A), SAA,2013 of PS New Karachi in any manner with malafide intentions. He has further contended that the applicants have been acquitted by the learned XIth ATC Court in the main case arising out of FIR No. 917/2022, including in FIR No. 918/2022 and FIR No. 919/2022; hence the applicants are entitled for concession of bail in the aforesaid criminal cases. He lastly prayed for allowing the bail application to the applicant.

5. On the contrary, learned APG assisted by the SI Aijazuddin of P.S New Karachi has vehemently opposed these bail applications on the ground that applicants/accused have been arrested in these cases which appear to be heinous and serious; that cases are at the initial stage and if they are granted bail, certainly, they will repeat the offense argued that there was no malafide on the part of the complainant in F.I.R No. 2015 of 2023, therefore, the applicants are not entitled to be released on bail. He lastly prayed for the dismissal of the bail applications.

6. The SIP Aijazuddin has submitted that the complainant was served with a notice, such statement has been filed. Complainant Owais Bin Mujeeb in Cr. Bail Application No. 960/2023 is called absent without intimation, however his case has been argued by the learned APG.

7. I have heard the learned Counsel for the parties at considerable length and have also examined the police file, so made available before me.

8. It is noted that the case has been challaned and present applicants/accused are no longer required for further investigation. It is also noted that neither the names of applicants appear in the FIRs, nor

their description/features are disclosed in the FIRs. As per police papers, applicants were arrested on 2.12.2022 in FIR No. 917/2022 under sections 353/324/34 PPC R/w 7 ATA of PS New Karachi, however, their arrest had also been shown in both the cases in hand in an encounter with the same police, in which the alleged robbed articles in both the cases were recovered from them including crime weapons. As observed above, applicants were not nominated in the FIR in such a situation; however, in the main encounter case in which the applicants had been arrested along with the recovered article were acquitted by the trial court vide judgment dated 18.4.2023 passed in special case No.85 of 2023 along with offshoot cases.

9. During the argument the learned counsel for the applicant referred to the aforesaid judgments and submitted that in the evidence the complainant in FIR No. 917/2022 admitted that wallets, mobile, and other articles allegedly recovered from the personal search of the accused was not produced in Court, he also admitted that neither in memo of arrest nor in FIR or any entry No. 45, it disclosed that any original documents or original CNIC was recovered from the possession of the accused, which evidence was appreciated and ended in the acquittal of the present applicant and on the same set of evidence they have come forward to dislodge the applicant from the relief sought for. Be that as it may, this is for the trial Court to see this aspect of the case as the aforesaid piece of evidence so far as the alleged recovery of the articles involved in the present case is concerned the same has already been set at naught and in this case, the reliance has been placed by the prosecution that alleged recovery has been made from the present applicant. In my tentative view if the aforesaid recovery has been discarded by the trial Court the case of the applicant requires further inquiry as provided under Section 497(2) Cr. P.C.

10. In view of the above facts and circumstances of the case I, am of the tentative view that before conviction, it is presumed that every accused is innocent, however in the present cases the factum of acquittal of the applicants in the main case has not been disputed by the prosecution and the facts of the cases in hand are similar, once the applicants have been acquitted on the same facts and circumstances, they cannot be detained for indefinite period as in the main case the prosecution evidence has been discarded and how at the bail stage the plea of prosecution could be considered as gospel truth to reject the bail plea of the applicants. Learned Assistant Prosecutor General, Sindh has failed to establish that the applicants were ever convicted in any case registered against them, therefore, they cannot be refused bail merely on the ground that criminal

cases of heinous nature have been registered against them. In this regard, I am supported by the case of *Jafar @ Jafri v. The State* **2012 SCMR 606**.

11. For what has been discussed above, I have no doubt in my mind to hold that the applicants have made out a case for further inquiry into their guilt within the meaning of section 497(2), Cr.P.C. Consequently, these bail applications are allowed and the applicants are allowed post-arrest bail subject to their furnishing surety in the sum of Rs.100,000 (rupees one hundred thousand only) each with P.R bond in the like amount to the satisfaction of the learned trial Court.

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

JUDGE

Shahzad/*