

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

Criminal Bail Application No. 1907 of 2023

Date	Order with signature of Judge
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For hearing of bail application

**12.9.2023**

Mr. Hameed Khan advocate for the applicant  
Mr. Zahoor Shah Addl. PG along with SI/IO Irshad Ahmed of P.S Madina colony, Karachi  
Complainant Ahsan Qureshi present in person.  
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Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to pre-arrest bail in F.I.R No.176/2023, registered under Section 392/397/34 PPC, lodged at Police Station Madina Colony Karachi. The earlier bail plea of the applicant has been declined by the learned VIIIth Additional Session Judge (West) Karachi vide order dated 21.08.2023 in Criminal Bail Application No. 3836/2023.

2. The accusation against the applicant is that on 07.06.2023 at about 1645 hours he was on a motorcycle with the force of a weapon snatched cash amount Rs. 1,50,000/- and fled away, Such report of the incident was lodged at P.S Madina Colony.

3. It is, inter alia, contended that the applicant is innocent and has falsely been implicated in this case; he next contended that the name of the applicant has not been mentioned in the FIR and he was implicated in the challan submitted after one month and 5 days. He has further contended that the bail should not be refused as a punishment. The principle based on natural justice is that any possible wrong at the bail stage could be cured at the time of final judgment if he is found guilty but any wrong committed by refusing bail and putting him into jail custody could not be cured if he is found innocent. He has next contended that the applicant is neither desperate dangerous nor a hardened criminal and has not previously been convicted and the case of the applicant is of merits and requires further inquiry. He lastly prayed for allowing the bail application.

4. Learned APG assisted by the complainant who is present in person has opposed the application on the premise that the applicant attempted to commit robbery. The offense is against society and there is a strong likelihood; that he will commit the same offense if released on bail. While denying the allegation of malice on the part of the police, learned APG submits that there was no reason for the police to implicate the applicant

without any justification. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused material available on record.

6. I am cognizant of the fact that the grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is the diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump-up charges through abuse of process of law, therefore an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post-arrest bail in every run of the mill in criminal case as it seriously hampers the course of the investigation. However, in the present case, a tentative assessment of the record reflects that the alleged offense took place on 19.06.2023 and was reported on the same day. The complainant claims to have been robbed by two unknown robbers who allegedly snatched his license pistol, mobile phone, and cash amount. Such a report of the incident was given to the police. The name of the applicant does not transpire in the FIR however his name has been inserted in the charge sheet after one month and 5 days on the statement of the co-accused compelling him to surrender before the trial Court and after the rejection of his bail he succeeded in obtaining interim bail from this Court vide order dated 31.08.2023. the prosecution has collected evidence to the extent that his picture appears in the CC TV footage inside the Bank.

7. It appears from the record that the applicant was admitted to interim pre-arrest bail by the trial Court and subsequently his bail plea was rejected vide order dated 21.08.2023 on the premise that there are no reasonable grounds for grant of pre-arrest bail in favor of the applicant. At this stage, learned counsel for the applicant has relied upon an order dated 06.09.2023 passed by the learned trial Court whereby co-accused Aijaz Khan has been enlarged on post-arrest bail by the trial Court on the premise that his case falls within the ambit of further inquiry as no identification parade was held before the Magistrate nor anything from the possession of the applicant was recovered.

8. The complainant present in the Court submits that he filed his affidavit before the trial Court with the narration that the aforesaid accused was not the same person who committed robbery and police showed his appearance outside the Court premises.

9. In this case, the allegations against the applicant are of like nature. Keeping in view the rule of consistency, coupled with the non-holding of the identification parade after the arrest of the co-accused, this case seems to be based on malafide intention and ulterior motives on the part of the police, which is apparent. The prima facie evidence so brought on record by the prosecution against the applicant is only the statement of the co-accused and even after his arrest he had not been put to an identification parade to be identified by the complainant whether he was the accused, who came to robe him as discussed supra. In such circumstances, the trial Court has to determine the guilt of the applicant whether he was vicariously liable for the act of co-accused or he was also in league with them this could only be possible after recording the evidence.

10. The record shows that the applicant/accused is not a previous convict. Moreover, the charge sheet has been submitted before the trial Court and the Investigating officer present in the Court does not request the custody of the applicant for further investigation nor the prosecution has claimed any exceptional circumstance, that could justify sending him behind bars for an indefinite period pending determination of his guilt. It is well-settled that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided for the alleged offense. Prima facie the prosecution has not collected sufficient evidence to show the connection of the applicant and his participation in the alleged crime with his accomplices except relying upon the CCTV footage which factum needs to be taken care of by the trial Court on the aspect.

11. From the tentative assessment of the evidence in the hand of the prosecution, it appears that there is hearsay evidence against the present applicant/accused, while it is yet to be determined if he is involved or not, which is possible only after recording the evidence by the trial Court. So far as CC TV footage is concerned it is with the prosecution to produce before the trial Court when the trial begins and if any material connecting the applicant is brought on record after recording of the evidence of the complainant and/or investigating officer the trial Court shall be at liberty to cancel the bail of the applicant without referring the matter to this Court.

12. After going through the material as discussed supra the bail application is accepted and interim bail granted to the applicant vide order dated 31.08.2023 is hereby confirmed on the same terms and conditions.

13. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at the trial.

JUDGE