

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1411 of 2023

Applicant : Safir S/o Yousaf
through Mr. Amir Jamil, Advocate

Respondent : The State
Through Mr. Abrar Ali Khichi,
Addl. P.G., Sindh

Date of hearing : 14.09.2023

Date of order : 14.09.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.869/2022 for the offence under Sections 109, 392, 397, 302, 34 PPC registered at PS Mominabad, after his bail plea has been declined by the learned IIIrd Additional Sessions Judge, Karachi (West) vide order dated 08.06.2023.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counsel for the applicant, applicant is innocent and has falsely been implicated; that after two months of the incident, the applicant was arrested from the same place, otherwise there is no evidence against him; that recovery was effected from the applicant but as per ballistic report, the same was not used in the commission of offence; that the applicant is in jail and he is no more required for further investigation. Lastly, he prays for post-arrest bail.

4. On the other hand, learned Addl. PG has vehemently opposed for grant of bail and relied upon Article 40 of the Qanoon-e-Shahadat Order, 1984 and states that on the basis of statement of co-accused that the applicant supplied arms and ammunition to the criminals, he was arrested on the spot and one TT pistol was recovered from him as such sufficient material is available on record against him.

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

6. Admittedly, the name of the applicant does not transpire in the FIR but from the face of FIR, it appears that the complainant received information that some dacoits injured Usman, as such, he reached at his house where one Huzaifa informed him that when they were going outside the house to take meal (roti), two dacoits came on motorcycle and snatched mobile phone as such Usman threw his mobile phone away, as a result the accused fired upon him; however, during treatment the injured Usman passed away. During course of investigation, one Mujeeb was arrested and he disclosed that accused Safir used to supply arms and ammunition to the dacoits as such on the basis of such information, the present applicant was arrested on the spot and recovered one TT pistol from him. Article 40 of Qanoon-e-Shahdat Order is only exception to Articles 37, 38 and 39 which shows how the information received from co-accused can be proved. In the instant case, one person lost his life and as per statement of the main accused Mujeeb, the present applicant used to supply arms and ammunition to the dacoits. Further the charge has been framed and the trial is in progress. Therefore, it is appropriate to direct the trial Court to expedite the case and conclude the same preferably within 60 days. Reliance is also placed in the case of **Rehmatullah v. The State (2011 SCMR 1332)**, wherein the Hon'ble Supreme Court of Pakistan has held that the courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period.

7. In view of the above, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail in terms of subsection 2 of Section 497 Cr.P.C. Accordingly, the instant Bail Application is **dismissed**.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE