

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1673 of 2023
(*Zahid Taro & another vs The State*)

Criminal Bail Application No. 1674 of 2023
(*Nazar Taro vs The State*)

Date

Order with signature of Judge

For hearing of bail application

19.9.2023

Mr. Ishfaq Ahmed advocate for the applicants in both applications.
Syed Meeral Sha Bukhari, Addl.PG along with SI/IO Ali Khan of P.S
Makli.

Through these bail applications under Section 497 Cr.P.C., the applicants Zahid and Nazar have sought admission to post-arrest bail in two F.I.R. Nos. 131/2023, registered under Section 397, 34 PPC, and F.I.R No. 132/2023, was registered under Section 23 (i) A and 25 of Sindh Arms Act, 2013 against applicant Nazar, lodged at Police Station Makli, District Thatta, therefore both bail application are taken up together for disposal.

2. The earlier bail plea of the applicants has been declined by the learned Additional Sessions Judge-I/ Model Criminal Trial Court Thatta vide separate orders dated 11.07.2023 in Criminal Bail Application Nos. 1115 and 1116/2023.

3. The brief contents of the F.I.R are that the complainant Noor Ali registered the FIR with the narration that on 03.07.2023, he was grazing his goats in the grazing lands of Dhandan Makan, then approximately at 1300 hours, two unidentified persons appeared and one of the accused took out his pistol and picked up one red colored goat of the complainant and placed it on the motorcycle and made their escape good on their motorcycle. Thereafter, the complainant and his relatives started chasing the applicants, in the meanwhile the police also joined them in chase and apprehended the applicants, along with the snatched goat. Thereafter, the applicants and case property were brought to the police station and disclosed their names as Zahid and Nazeer Taro. The police, also recovered one T.T. pistol from the applicant Nazar under mashirnama and registered the case against the applicants under Section 397, 34 PPC, and a separate F.I.R No. 132/2023 was registered against the applicant Zahid under sections 23 (i) A and 25 of Sindh Arms Act, 2013 on the same day.

4. The learned counsel for the applicants contends that the applicants are innocent and have falsely been implicated in this case; and that the offense under section 397, P.P.C. is not applicable in the present case, whereas the offense under Section 392 PPC has not been applied in such circumstances no case against the applicants could be registered under Section 397 PPC independently. The learned counsel for the applicants/accused further argued that the complainant fabricated the entire case against the accused persons, due to previous enmity, as nothing was recovered from the accused and the recoveries were foisted upon the applicants/accused. Learned counsel submitted 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 where the applicants were allegedly arrested; that the guilt of the applicants requires further inquiry entitling them for bail. He further contended that the story of the FIRs is unbelievable, as no one is expected to go for such a heinous crime with uncovered faces. He also submitted that the duration between the time of offense and arrest is unreasonably short, whereas the offenses do not fall within the prohibitory clause of Section 497 Cr.P.C. He further submitted that the eye witness of the incident is the real brother of the complainant and such makes the case against the applicants/accused of further inquiry. He also pointed out that no previous criminal record existed against the applicants/accused, whereas they are no longer required for further investigation. In support of his contention, he relied upon the case of *Muhammad Tanveer vs. The State* **PLD 2017 SC 733**. He lastly prayed for allowing the bail application.

5. Learned Addl. P.G has submitted that though notices have been issued to the complainant however he is called absent. It seems that the complainant was served with the notice, however, he has chosen to remain absent; and on his behalf the learned Addl. PG has opposed the bail applications on the premise that during interrogation accused confessed their guilt for committing the offence; that no enmity has been disclosed by the applicants/accused with the complainant and /or police to involve them falsely in this case; that there exists sufficient tangible evidence connecting the accused with the offences. He further argued that the offense is against society and there is a strong likelihood that they will commit the same offense if released on bail. Learned Addl. P.G. further submitted that the applicants have a criminal history. He prayed for the dismissal of the bail application.

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

7. The applicants are charged with an offense punishable under Section 397 PPC, which carries imprisonment of up to seven years. The point, that requires consideration at the bail stage, is that as to whether there is material in the case is sufficient to refuse bail to the applicants under Section 397/34 PPC. It shall be advantageous to reproduce Section 397 PPC herein below:-

“397. Robbery or dacoity, with attempt to cause death or grievous hurt. *If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”*

8. During the investigation, the prosecution has applied in FIR Section 397 PPC. Whereas Section 393 PPC pertains to an attempt to commit robbery which is punishable with R/I for a term that shall be extended up to seven years, whereas Section 397 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than seven years, however, the prosecution was only bother to invoke Section 397 PPC without corresponding offense. 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. Since the alleged recovery of one goat in the present case which is the main cause of action of the complainant, however, the police have returned the goat to the complainant and it is yet to be proved whether the applicant robbed the goat or otherwise and all the aspects of the case shall be taken care of by the trial Court. It is also the case of the prosecution that applicants were arrested not at the spot but somewhere else and after their arrest, holding of test identification parade was necessary in terms of the judgment of the Supreme Court in the case of Farman Ali v. The State [1997 SCMR 971], which factum is missing in the present case, the reasons best known to the investigation officer, who allegedly narrated that applicants disclosed their identity when they were arrested if this is the stance of the investigating officer let this aspect be taken care of by the trial Court after examining him.

9. Prima facie, it appears from the record that the complainant and police chased the applicants arrested them, and brought them to the police station where subject F.I.R was lodged against them under Section 397 PPC, besides, the alleged goat has been shown as case property. The longest term of imprisonment provided for the offenses under Section 397 P.P.C. carries punishment with imprisonment for not less than seven (07)

years and does not fall within the prohibition contained in Section 497(1) Cr. P.C.

10. The apex Court in the case of *Tariq Bashir vs. The State* (PLD 1995 S.C 34) has held that the grant of bail in bailable offenses is a right while in non-bailable offenses is concession/grace. The applicants/accused have been in jail since 3.7.2023 and are no longer required for investigation, moreover, there is nothing on record that the present applicants are previous convicts.

11. Going ahead on the subject, there is no cavil to the proposition that courts, by the very purpose of their creation, are required to do justice. The expression “justice” in its broadest sense, is the principle that every individual must receive, which he deserves according to law. Justice is a notion described as the constant perpetual will to allot to every man what is due to him. Every criminal wrong must be reciprocated with procedural stringency and penal consequences. However, courts, even at the bail stage, are not bound by the provisions of law applied in the FIR rather have to see the offence applicable from the contents of the prosecution case. Additionally, it is also a well-settled principle of law that mere heinousness of offense is no ground to reject the bail plea. The basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise.

12. The essential prerequisite for the grant of bail by sub-Section (2) of Section 497, Cr.P.C. is that the Court must be satisfied based on the material placed on record that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life. The condition of this Clause is that sufficient grounds exist for further inquiry into the guilt of the accused, which would mean that the question should be such, that has nexus with the result of the case and can show or tend to show that the accused was not guilty of the offense with which he is charged.

13. Primarily, grant or rejection of bail is a discretionary relief but such discretion should be exercised fairly and judicially. The word discretion when applied to Court means sound discretion judiciously guided by law and to lessen the hardship of the people. For what has been discussed above, prima facie the applicants have made out a case for further inquiry into their guilt within the meaning of Section 497(2), Cr.P.C.

14. For the foregoing reasons, the applicants are admitted to post-arrest bail in the FIR No. 131 of 2023 of P.S Makli under Section 397/34PPC, subject to their furnishing solvent surety in the sum of Rs.50,000/-(Rupees Fifty Thousand Only) each and P.R Bond in the like amount to the satisfaction of trial Court, whereas the applicant Nazar is also admitted to post-arrest bail in FIR 132 of 2023 of P.S Makli under Section 23(i)A and 25 Sindh Arms Act 2013 subject to his furnishing solvent surety in the sum of Rs.50,000/-(Rupees Fifty Thousand Only).

15. 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.

JUDGE