

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

Criminal Bail Application No.1312 of 2023
(Abid Ali and anotherV/sThe State)

Date	Order with signature of Judge
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For hearing of bail application

12.7.2023

Mr. Kausar Ali Shar, advocate for the applicant
Mr. Siraj Ali Khan, Additional PG along with SIP Maroof, Police Station
Gulshan-e-Maymar.

Through this bail application, the applicants Abid Ali son of Orangzeeb, and Waqar Ali son of Ali Hassan seek post-arrest bail in Crime No.216/2023, registered under Section 392/397/34 PPC at PS Gulshan-e-Maymar. Applicants earlier filed Bail Application bearing No.2622/2023, which was dismissed by the learned III-Additional District & Sessions Judge Karachi West, hence this bail application.

2. Learned counsel for the applicants submits that the present applicant was not nominated in the FIR; that the only evidence against the applicant is that his co-accused had implicated him during the investigation; that Identification Parade, in this case, was not conducted; that his guilt needs further probe and his case calls for further inquiry.

3. Learned APG has opposed the bail and prayed for dismissal of the bail application.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. From the perusal of the FIR, it appears that the same has been lodged against the unknown accused persons who committed robbery, and took away cash from the complainant with the force of a weapon; however there is no description of the accused persons mentioned in the FIR. The record does not show that any implicating material has been recovered from the applicants/ accused.

6. From the record, it also transpires that the applicants/accused were got involved in the case upon the statement of co-accused and besides their statement in the police custody in another case. The Supreme Court in the case of The State through Director Anti-Narcotic Force, Karachi v.

Syed Abdul Qayum [2001 SCMR], while dilating upon the evidentiary value of statement made before the police in the light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, *inter alia*, held that statements recorded by police during the investigation are inadmissible in the evidence and cannot be relied upon.

7. Tentative assessment further reflects that the applicants are not nominated in the FIR nor arrested from the place of occurrence. In the present case, though the FIR was against the unknown persons yet upon the arrest of the present applicant/ accused there appears non-test-identification parade has been held. It is well settled that in cases where the names of culprits are not mentioned, holding of test-identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State* [1997 SCMR 971], wherein the Supreme Court of Pakistan, *inter alia*, has held:-

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the FIR Holding of such test is a check against false implication and it is a good piece of evidence genuine culprit...”

8. *Prima facie* in the absence of an identification parade of the applicants to ascertain whether they were the same culprits or otherwise, besides the applicants have been arrested on the statement of co-accused. I.O present in Court has submitted that though the complainant has not identified the applicants through an identification parade, however, they have been booked in the case on the pointation of the complainant whereas the FIR is silent about disclosure of the names of the applicants. The question arises as to how the applicants were identified by the complainant at the time of their arrest though he has not described the features of the applicants in the FIR. The aforesaid questions need to be looked into by the trial Court after recording the evidence of the complainant. In view of the above the case against the applicants requires further inquiry as provided under Section 497(2) Cr. P.C.

9. The Supreme Court of Pakistan in the case of *Jamal Uddin alias Zaubir Khan v The State* [2012 SCMR 573] while hearing leave to appeal arising out of judgment of Peshawar High Court whereby the petitioner was declined bail, *inter alia* held as under:-

“ 5. The argument that the petitioner has been involved in two other cases of similar nature would not come in the way of grant of petition so long as there is nothing on the record to show that he has been convicted in any one of them....”

10. Besides the above, it is also well settled that mere pendency of criminal cases against any of the accused does not ipso-facto disentitle him from the grant of bail. The record shows that the applicant/accused is neither a previous convict nor a hardened criminal and has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offense.

11. From the tentative assessment of the evidence in the hand o of the prosecution, it appears that there is hearsay evidence against the present applicant/accused. Nonetheless, the truth or otherwise of charges leveled against the accused could only be determined after trial, after taking into consideration the evidence adduced by both parties. It may be observed that the offense alleged against the applicants/accused falls outside the prohibitory clause of Section 497. Cr. P.C. In such cases, the grant of bail is a rule and refusal is an exception. Reliance in this regard can be placed on the cases of Tariq Bashir and 5 others v. The State [PLD 1995 SC 34] and Muhammad Tanveer v. The State [PLD 2017 SC 733]

12. In view of the above the case against the applicants requires further inquiry as provided under section 497(2) Cr. P.C.

13. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima face, the applicant/ accused have succeeded to bring their case within the purview of further inquiry and as such they are entitled to bail and for this reason, the applicants/ accused were admitted to bail by my short order dated 12.07.2023 in Crime No. 216/2023, registered under Section 392/397/34 PPC at PS Gulshan-e-Maymar 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 the trial Court .

14. The learned trial Court is directed expedite the trial and conclude the same within a reasonable time.

15. Needless to mention here that any observation made in this order is tentative and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that it, during proceedings, the

applicant/accused misuses the bail, then the Court would be competent to cancel his bail without making any reference to this Court .

16. These are the reasons for my short order dated 12.7.2023 whereby the bail application was allowed.

JUDGE

Shahzad Soomro
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