

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr.Bail Application No.S-812 of 2023

Applicant: Murtaza son of Sajjan Chandio,  
through Mr. Meer Ahmed Mangrio,  
Advocate.

Respondent: The State through Mr. Nazar Muhammad Memon,  
Additional Prosecutor General.

Date of hearing: 02.10.2023

Date of Order: 02.10.2023

**ORDER**

**ARSHAD HUSSAIN KHAN, J:-** Through the instant criminal bail application, the applicant/accused above named seeks his post-arrest bail in Crime No.142 of 2023, under sections 462-M, N, H and 34 PPC, registered at P.S Jamshoro, after his bail plea was declined by the learned Sessions Judge, Jamshoro vide order dated 24.07.2023.

2. The facts of the prosecution case in nutshell are that on 02.06.2023 complainant being SDO on NTDC Jamshoro KV-500 transmission line along with staff went to check Tower on government vehicle. During checking at about 1300 hours they reached near Tower No.456 where they saw four persons taking brace plates of Tower. The accused persons after seeing the complainant party tried to escape; however, one of them was apprehended by the complainant party along with pouch while two persons made their escape good. On inquiry, the apprehended accused disclosed his name Murtaza (applicant) and also disclosed the names of co-accused as Rasool Bux son of Muharram Khoso and Asghar son of Abdul Lateef Khoso. After that the complainant party checked the recovered pouch and found two joint plates, one short and one large, 2 UK plates, 2 Eye tackle lying in pouch. The complainant party then brought the apprehended accused, motorcycle and pouch at PS Jamshoro where the complainant

handed over the accused alongwith recovered property. After that, the complainant went to check the NTDC Towers, where they saw that following detailed 140 blesslet plates and nut bolts were theft away by the above mentioned accused persons; hence, the complainant narrated such facts to their high-ups and on their directions lodged instant FIR.

3. learned Counsel for the applicant has mainly contended that the complainant has been implicated in this case / crime falsely and with ulterior motives; that the applicant has no concern with the alleged offence; that the alleged place of incident is very thickly populated area but no private person has been associated in this case as witness or to act as mashir; that nothing has been recovered by the police from the possession of the applicant; that no specific role has been assigned to the applicant in alleged FIR; that no case of ATA has surfaced but FIR was piece of exaggerated facts; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C; that investigation has been completed and the applicant is no more required for further investigation; that the case of applicant is one of further inquiry as there is no chance of tampering with the evidence. He; therefore, has prayed that the applicant may be admitted to post arrest bail for which he is ready to furnish required surety.

4. Learned Addl.P.G, however, opposed the bail application while contending that the applicant/accused is very much nominated in the FIR with specific role; therefore, he is not entitled for concession of bail this stage.

5. Heard arguments and perused the record.

6. It is an admitted fact that the subject case has already been challaned and applicant is no more required for further investigation. Further, as per record, the whole case of the prosecution rests upon complainant-Abdul Samad SDO NTDC and his sub-ordinate staff; therefore, there is no apprehension of tampering with the prosecution evidence by the applicant. It is an admitted fact that the mashirs of

recovery are sub-ordinate of the complainant; therefore, their evidence requires to be scrutinized deeply which could only be possible at the trial after examining the PWs. Further, the incident took place on 02.06.2023 at 1300 hours in the daylight time in a thickly populated area, despite of this fact the complainant has not made any efforts to associate/join any private person of the locality to witness the incident. All these facts require evidence at the time of trial, till then the case of the applicant requires further probe. Admittedly, the offence does not fall within the prohibitory clause of Section 497 Cr.P.C, hence, in the light of the principles and law laid down by the Hon'ble Supreme Court in cases where offences fall within non-prohibitory clause of Section 497 Cr.P.C., grant of bail has to be considered in favour of accused as a rule, but may be declined in exceptional cases. Reliance can be placed on the cases of *Zafar Iqbal v. Muhammad Anwar and others* [2009 SCMR 1488] and *Muhammad Tanveer v. The State and another* [PLD 2017 SC 733].

7. The record further shows that the applicant/accused is not previous convict nor hardened criminal and has been in continuous custody since his arrest and is no more required for further 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 principle of law that bail cannot be withheld as punishment. It is also well settled that truth or otherwise of the charges could only be determined at the conclusion of trial after taking into consideration the evidence adduced by both the parties. Reliance in this regard can be placed on the case of *Muhammad Nadeem Anwar and another v. National Accountability Bureau and others* [PLD 2008 SC 645].

8. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie the applicant/accused has succeeded to bring his case within the purview of further inquiry and

as such he is entitled to bail and therefore vide a short order dated 02.10.2023 the applicant / accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

9. Needless to mention here that any observation made in this order is tentative in nature 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 in the event if, during proceedings, the applicant / accused misuses the bail, then the trial Court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 02.10.2023.

JUDGE

Ahmed/Pa,