

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Bail Application No.S-103 of 2024

Applicant: Anopo @ Anopchand son of Nanak,
Through Mr. Wishan Das Kollhi.

The State: Through Mr. Shahzado Saleem, Additional P.G Sindh.

Date of hearing: 24.06.2024

Date of order: 24.06.2024

ORDER

Muhammad Saleem Jessar, J: Through instant bail application, applicant Anopo @ Anopchand seeks his admission on pre arrest bail in Crime No.15 of 2024, registered with P.S Kaloi for offence U/A 3/4 PEHO, 1979. The case has been challaned which is now pending for trial before Court of Judicial Magistrate Diplo. After furnishing surety before this court, the applicant has surrendered before trial court and joined the trial proceedings which is fixed for hearing on 01.07.2024.

2. The crux of the prosecution case are that a police party headed by SIP Premon had left PS under their daily dairy entry No.21 at 0300 hours dated 22.05.2024. While snap checking they saw a red color motorbike came alongwith riders having a white colored katta (sack) lying over fuel tank. The police party intercepted them to stop but person seated on rear seat to whom they know as Anopo @ Anopchand (applicant) slipped away by making his escape good due to darkness. The person who was riding the motorbike was enquired of his whereabouts who disclosed his name to be Raja. Due to non-availability of private persons, the complainant by citing his subordinate(s) as mashirs took possession of the motorbike as

well katta (sack) then 10 pints of white color watt one and 10 pints of red color dry gin. Such memo of arrest and recovery was prepared on spot. Later they came at the PS alongwith accused and case property where instant case was registered on behalf of the State.

3. Learned Counsel submits that though the applicant is nominated in the FIR; however, nothing incriminating has been shown to have been recovered from his exclusive possession and per allegation he while seeing the police party made his escape good, therefore, case against him requires further inquiry. He lastly prayed for grant of bail.

4. On the other hand, learned Assistant P.G appearing on behalf of State opposes the bail application; however, cannot controvert the fact that the offence with which the applicant stand charged carries maximum punishment for 03 years besides allegation against him is that he allegedly flee away from the scene of offence and nothing was recovered from his possession.

5. Heard learned Counsel for respective parties and have gone through record made available before me.

6. No doubt, the applicant is nominated in the FIR; however, allegation against him is that he whilst sitting on rear seat of motorcycle driven by co-accused was intercepted by the police and had made his escape good by taking benefit of darkness; however, police party though was less with sophisticated weapons did not follow him. As reported co-accused Raja who is said to be son of applicant from whom police recovered motorcycle as well as certain quantity of Pakistani Whisky, has

been bailed out by the trial court. Though applicant has been shown sitting on rear seat of the motor bike, but at the time of fleeing away, had not left any incriminating nor has been shown to be having any article with him, connecting him with the commission of offence except mere his presence. Therefore, such allegation is yet to be established by the prosecution after recording its evidence and then trial court has to determine the same. Moreover, case is being tried by the Court of Judicial Magistrate where after recording its evidence, if prosecution may succeed to prove its charge against him even then punishment of more than three years cannot be visualized. Reliance is placed on the case of MANZOOR ALI alias MUMTAZ Vs. THE STATE (2001 P Cr. LJ 344) [Karachi]. In case the applicant may be taken into custody today, tomorrow again he will be released on bail on the ground of consistency.

7. In the circumstances and in view of dicta laid down by Hon'ble Supreme Court of Pakistan in case of Muhammad Ramzan Vs. Zafar Ullah and another (1986 SCMR 1380) and in case of Muhammad Tanveer Vs. The State and another (PLD 2017 S.C 733), the case against applicant requires further inquiry. Consequently, instant bail application is hereby allowed; ad-interim pre-arrest bail granted earlier to applicant Anopo @ Anopchand son of Nanak is hereby confirmed on same terms and conditions.

8. The observations made in this decision are of a tentative nature and will not influence the merits of the case.

JUDGE

"Faisal"