

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1171 of 2024

Date

Order with signature of Judge

For hearing of bail application

Date of hearing and Order:-04.07.2024

Mr. Fahim Ali Mangi advocate for the applicant
Mr. Kashif Nazir advocate along with the complainant
Mr. Zahoor Shah, APG along with SIP Muhammad Khan of PS Model Colony and SI Muhammad Hussain I.O of the case.

ORDER

Adnan-ul-Karim Memon, J:- Through this bail application under Section 497 Cr.P.C., the applicant Muhammad Khan has sought admission to post-arrest bail in F.I.R No.263/2023, registered under Section 397/412/413/34 PPC, lodged at Police Station Model Colony. The earlier bail plea of the applicant has been declined by the learned IV Additional Sessions Judge (East) Karachi vide order dated 11.05.2024 in Criminal Bail Application No. 2078/2024 on the premise that the applicant failed to raise any fresh ground in the bail application as his earlier bail had already been declined on merit.

2. The accusation against the applicant is that he along with his accomplices snatched the motorbike from the brother of the complainant, subsequently the custody of the applicant was handed over to the police where he disclosed his name to be Muhammad Khan, finally the brother of a complainant identified the accused at the police station, which factum has been admitted by the Investigating Officer present in Court. He further stated that the applicant is a habitual offender and recovery of the motorbike was made however not from the present applicant.

3. Learned counsel for the applicant/accused mainly contended that the applicant/accused has been falsely implicated in this case; that the present applicant is not named in the FIR as the complainant lodged the instant FIR against the unknown culprits whose features and descriptions are not mentioned in the FIR. He added that the FI.R is delayed for a considerable period. Lastly, it is submitted that the applicant/accused has been behind bars since his arrest in the aforesaid crime without his fault. Learned counsel has argued that no specific role was assigned to the applicant in the alleged crime, which is unwitnessed by any of the persons of the locality where the alleged incident had taken place. He prayed for allowing the instant bail application.

4. Learned APG assisted by the complainant who is present in person has opposed for grant of this bail application and he prayed for dismissal of the instant Bail application.

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

6. From the perusal of the FIR, it appears that the same has been lodged against the unknown accused persons. 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 applicant/accused.

7. From the record, it also transpires that the applicant/accused was involved in the case upon his statement in police custody. The Supreme Court in the case *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], 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 investigation are inadmissible in the evidence and cannot be relied upon.

8. In the present case, though the FIR was against the unknown persons yet upon arrest of the present applicant/accused there appears no test-identification parade has been held through Judicial Magistrate. 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].

9. The argument that the applicant has been involved in five other cases of a similar nature would not come in the way of a grant of bail so long as there is nothing on the record to show that he has been convicted in any one of them. Reliance is placed in the case of *Jamal Uddin alias Zaubir Khan v. The State* [2012 SCMR 573]. Besides, it is also well settled that the mere pendency of criminal cases against the accused does not ipso-facto disentitle him from the grant of bail. Reliance in this regard has also been placed on the case of *Tarique and others v. The State* [2018 MLD 745].

10. 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 longer 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, the Court has to consider the minimum aspect of the sentence provided for the alleged offense. Besides that, the mother of the applicant moved a Habeas Corpus Petition before the Sessions Court much before the lodgment of FIR and the raid was conducted on 16.10.2023, however, no detenu was recovered and subsequently the applicant was shown and arrested in the present crime, which factum requires further inquiry, besides there is a delay of 35 days for lodging the FIR. So far as Section 412 and 413 PPC are concerned the ingredients of the same are yet to be determined by the trial Court.

11. From the tentative assessment of the evidence in the hand 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 the trial after taking into consideration the evidence adduced by both parties. It may be observed that the offense alleged against the applicant/accused falls outside the prohibitory clause of Section 497, Cr.P.C. In such like case 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 others v. The State* [PLD 1995 SC 34] and *Mohammed Tanveer v. the State* [PLD 2017 Supreme Court 733].

12. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicant/accused has succeeded in bringing his case within the purview of further inquiry, and as such he is entitled to bail and for this reason, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees two lacs only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

13. Needless to mention here 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 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.

JUDGE