ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1376 of 2024
(***re-Imtiaz Ali & Raj Kumar v The State)***

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(***re-Imtiaz Ali & Raj Kumar v The State***)

Date	Order with signature of Judge

For hearing of bail application

Date of hearing and Order:- 15.7.2024

Mr. Rameez Raja Solangi advocate for the applicant in both the bail applications.
Mr. Khadim Hussain, APG, along with I.O Anwar Hussain of PSAVLC and Abdul Nabi of PS Jauharabad.
Complainant Manzoor ul Haq in Bail Application No.1377 of 2024 present in person.
Nemo for Complainant in Bail Application No.1376 of 2024

O R D E R

Adnan-ul-Karim Memon, J :- Through these bail applications under Section 497 Cr.P.C., the applicants Imtiaz Ali and Raj Kumar have sought admission to post-arrest bail in F.I.R No.182 and 183 of 2024, registered under Section 381-A PPC at Police Station Joharabad, Karachi and this was the reason to take up both the bail applications for disposal as the both arise out of the subject crimes and common questions of law as well as facts are involved.

2. The earlier bail plea of the applicants has been declined by the learned Additional Sessions Judge V (Central) Karachi vide orders dated 14.06.2024 in Cr. Bail Application Nos. 1428 and 1429 of 2024 on the premise that during the interrogation of crime No.521/2024 under section 397/34 PPC of PS Karachi Industrial Area and FIR No. 182/20234 of PS Taimoria under sections 381-A, PPC applicants/accused disclosed commission of crime that they along with their other accomplices stolen the subject vehicles as disclosed in both the F.I.Rs, and recovery was made from them.

3. It is argued that there was an inordinate delay of five days approximately in lodging of FIR without explanation, the police falsely implicated the above-said case to the applicant/accused persons, and it is argued that police kidnapped both the accused/applicants from their houses and demanded Rs. 10,00,000/- from their families. Learned counsel contended that there is extra-judicial confession; and that no physical feature of the applicants/accused has been mentioned in the FIR.

It is contended that the alleged offence does not come within the prohibitory clause of section 497 CrPC and in such case, grant of bail is a rule and rejection is an exception Learned counsel prayed for allowing the bail applications.

4. It has vehemently been argued by the learned Additional Prosecutor General, Sindh that the applicants have also been involved in other criminal cases, and if bail is granted to them, they would jump the bail bond and would attempt to tamper the prosecution evidence. He next contended that if any incriminatory material related to the case is recovered or any fact is discovered in consequence of the information conveyed by the accused person, then the information so received would be admissible in evidence within the purview of Article 40 of the Qanun-e- Shahadat Order, 1984 because then the presumption would be towards its truthfulness. Since the disclosure of the accused Ismail has been followed by the recovery of some stolen property as well as the discovery of new facts of selling the gold ornaments including the present applicant/accused Habibullah, which earlier was not known. He argued that Article 40, of Qanoon-e-Shahadat, provides that when any fact is revealed in consequence of information received from any accused in the custody of a police officer, such information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, may be proved. The information supplied by the applicants under Article 40 ibid relating to incriminating articles is admissible therefore, they are not entitled to any indulgence in the matter of bail.

5. I, however, have not felt persuaded to agree with the learned Additional Prosecutor General, Sindh in this regard for the reasons that in my humble opinion, the extra-judicial confession of the accused was recorded in police custody, thus not admissible under Articles 38 & 39 of the Qanun-e-Shahadat Order, 1984. Besides, before conviction, it is presumed that every accused is innocent. Insofar as the case in hand is concerned, despite repeated queries by this Court, learned Additional Prosecutor General, Sindh has failed to establish that the applicants were ever convicted in any case registered against them, therefore, they cannot be refused bail merely on the ground that certain other criminal cases have been registered against them. In this regard, I am supported by the case of *Jafar @ Jafri v. The State reported in* **2012 SCMR 606**. The expressions “habit” and “habitually” used in section 110 have not been defined in the Cr.P.C. The prime object of the said provision is ensuring the good behavior of the person liable to proceedings thereunder to serve the larger public interest i.e. safety and security. The authorities are, therefore,

expected to exercise powers under section 110 Cr.P.C. with great caution. Bald allegations that a person by habit or habitually commits the offenses highlighted in the said provision are not sufficient to proceed under section 110 Cr.P.C. The allegation must substantially be supported by cogent evidence. Such powers, therefore, cannot be exercised as a tool of oppression against innocent, poor, and helpless people. Section 75 of the Pakistan Penal Code, 1860 (the "PPC") makes the accused of an offense mentioned in Chapter XII or XVII of the PPC liable to enhanced punishment if he has earlier been convicted of the offenses mentioned in the said chapters.

6. Section 221(7) of Cr.P.C., therefore, provides if the accused is previously convicted of any offense and because of such previous conviction is liable to enhanced punishment and it is intended to prove such previous conviction affects the punishment which the court may think fit to award for the subsequent offense, the fact, date and place of previous conviction shall be stated in the charge and if such statement has been omitted in the charge, the court may add it any time before the sentence is passed. The onus to prove the previous conviction of an accused lies on the prosecution. It is, therefore, the duty of the Investigating Officer to investigate the previous conviction of the person accused of an offense mentioned in Chapter XII or XVII of PPC, to collect evidence regarding the previous conviction of the accused, and produce before the trial court. Section 221(7) of Cr.P.C. further caters to a situation where the fact of previous conviction has been omitted in the charge. The fact of a previous conviction can subsequently be added to the charge at any time before the sentence is passed. The duty of the Investigating Officer is, therefore, onerous. He has to work round the clock to follow and fetch the record of previous conviction(s) of a person accused of an offense mentioned in section 75 PPC.

7. In the instant case, neither the applicant, as per contents of the FIR No. 182 and 183 of 2024, referred to above, is nominated as an accused, nor a warrant has been issued against him under sections 75/87, Cr. P.C he has been arrested upon his statement in police custody; even after his arrest in the above cases, he was not forwarded to the Magistrate for his confessional statement to the effect that he was the person who theft the subject vehicles from the place of the incident as reported by both the complainant for the reason confession before the police is not admissible in evidence under the law. So far as recovery of subject vehicles from the custody of the applicants is concerned, firstly, the recovery of the stolen vehicles has been effected on

the pointation of the applicants and its evidentiary value is yet to be determined by the learned trial court after recording evidence as the prosecution claims that there was/is CCTV footage; mere possession of the stolen property is not sufficient to constitute an offense under Section 411 PPC rather in addition it has got to be established that the person in possession of the stolen property had dishonestly received or retained the property knowing or having the reasons to believe the same to be stolen, however, the prosecution has not applied section 411 PPC in the charge sheet.

8. Primarily, to constitute an offense under the aforesaid Section, the prosecution is not only required to prove the possession but also to establish the knowledge about the property to be stolen. In the present case, the prosecution has presented the case to the extent that the subject vehicles were stolen and involved in the subject FIRs under Section 381-A PPC and came into possession of the applicants, which were later on recovered from their possession, be that as it may, if the aforesaid section is supposed to be applied, the maximum punishment provided under the statute for the offense is seven years however under Section 411 PPC is three years, which provides dishonestly receiving stolen property and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offenses not falling within the prohibitory clause is a rule and refusal is an exception. The liberty of a person is a precious right which cannot be taken away without exceptional foundations. So far as the applicability of sections 381-A PPC and 411 PPC, the trial Court has to determine, if the prosecution brings any cogent material to connect the applicant with the alleged crime, as the issue of confession before police and subsequent recovery has already been discussed in the preceding paragraph.

9. Keeping in view the peculiar facts and circumstances of the present case, the possibility cannot be ruled out that the applicants have been involved in the cases by throwing a wider net by the Police under the garb of the pretext that the applicants are professional car snatchers. Mere allegations are no grounds to decline bail for an accused. It is now established that while granting post and pre-arrest bail, the merits of the case can be touched upon by the Court. Reliance is placed on *Miran Bux Vs. The State* (**PLD 1989 SC 347**), *Sajid Hussain @ Joji Vs. The State* (**PLD 2021 SC 898**), *Javed Iqbal Vs. The State* (**PLD 2022 SCMR 1424**) & *Muhammad Ijaz Vs. The State* (**2022 SCMR 1271**). Even otherwise the offense does not attract the prohibitory clause of section 497(1), Cr.P.C. Thus the case calls for further probe, in the peculiar facts and

circumstances of the case and the dicta laid down by the Supreme Court of Pakistan in the case of *Tanveer v. The State and another* (**PLD 2017 SC 733**), the case against the applicants requires further inquiry within the meaning of sub-section 2 to Section 497 Cr.P.C. Consequently, these bail applications are allowed and the applicants are allowed post-arrest bail in F.I.R No.182 and 183 of 2024, registered under Section 381-A PPC at Police Station Joharabad, Karachi, subject to their furnishing bail bonds in the sum of Rs.200,000 (Rupees two hundred thousand only) each in both cases and P.R Bond in the like amount to the satisfaction of the learned trial Court.

10. Before parting with this order; however, it is clarified that the reasoning given in this order is tentative and will have no effect whatsoever in any manner upon the merits of the case.

JUDGE

Shafi