

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail App. No. S – 305 of 2024

(Azhar Ali v The State)

Cr. Bail App. No. S – 321 of 2024

(Kamran Ali v The State)

Date of hearing	Order with signature of Judge
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Hearing of case

1. For orders on office objections at Flag-A
2. For hearing of bail application

Date of hearing and order: 02.08.2024

Mr. Rab Dino Makwal, Advocate for applicant in Cr. Bail App. No. S-321 of 2024.

Mr. Sheeraz Fazal, Advocate for applicant in Cr. Bail App. No. S-305 of 2024.

Mr. Ali Akbar Shar, Advocate for complainant.

Mr. Shafi Muhammad Mahar, Deputy Prosecutor General along with ASI Zahid Jagirani, Investigating Officer, Police Station ‘B’ Section, Khairpur.

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ORDER

Adnan-ul-Karim Memon, J. The applicant Kamran Ali is seeking pre-arrest bail under Section 498, Cr. P.C, whereas the applicant Azhar Ali is seeking post-arrest bail in F.I.R No.101 of 2024, for offenses under Sections 392, 34, PPC, registered at Police Station ‘B’ Section, Khairpur, their earlier bail pleas have been rejected by the trial court vide orders dated 26.4.2024 and 17.5.2024 on the premise that the applicants are nominated in the FIR and the crime weapon was affected from applicant Azhar besides they in connivance with each other robbed the complainant of Rs.150,000/-, motorcycle & Mobile phone.

2. The accusation against the applicants is that on 5.3.2024, they in connivance with each other robbed the complainant of his valuables, such report of the incident was given to Khairpur police on 6.3.2024, who registered the F.I.R against the applicant and others for offenses under Sections 392, 34, PPC during investigation officer deleted section 392 and inserted section 397 PPC in the charge sheet vide report dated 8.4.2024.

3. Learned counsel appeared on behalf of the applicants/accused and stated that Section 397 PPC is misapplied and the applicants/accused are innocent. He further states that the uncle of the applicant/accused namely Ali Sher Makwal is information Secretary of PPP, to defame his uncle the instant FIR has been registered against them. He further states that there is a delay of one day in lodging of FIR and FIR has been registered with mala fides of the complainant and no specific role has been assigned to them. Lastly, he prayed that interim bail

already granted to the applicant Kamran Ali may be confirmed in the interest of justice, whereas the applicant Azhar Ali may be admitted to post-arrest bail.

4. The learned Deputy prosecutor General assisted by the learned counsel for the complainant has opposed the bail on the ground that the applicant/accused is nominated in the FIR with his specific role of robbery. Learned counsel for the complainant has submitted that no specific details of any mala fide intention or ulterior motives have been alleged in this case. The complainant explained all the facts. He added that case of further inquiry pre-supposes the tentative assessment which may create doubt concerning the involvement of the accused in the crime. Sufficient material is present to demonstrate both applicant's involvement in the case without any reasonable doubt. He further submitted that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. The accused Azhar Ali was caught red-handed and recovery has been effected from him.

5. I have heard the learned Counsel for the parties and perused the record with their assistance.

6. However, I am also well aware of the fact that the grant of prearrest Bail is an extraordinary relief that is extended in exceptional circumstances when glaring malafide is shown on the part of the prosecution to cause unjustified harassment and humiliation of a person in case of his arrest. However, in the present case, the allegation against the applicant Kamran Ali is that he along with his accomplices robbed the complainant and escaped away whereas co-accused Azhar Ali was apprehended on the spot. But the prosecution story is different which prima facie suggests that the alleged incident took place on 5.3.2024 and reported on 6.3.2024 and the F.I.R specifically suggests that all accused escaped away from the place of the incident but the Investigation officer present in court says that co-accused was arrested in the morning i.e. second day of the incident and recovery was effected from him after a considerable period. The complainant also says that on the date of the alleged incident, he knew the accused and after consultation with others he went to the house of the accused and demanded the robbed articles but they refused when confronted with this position of the case about the arrest of the co-accused at the spot, his counsel submitted that on the next date, the co-accused was arrested, if this is the stance of the complainant, then a question arises as to how he narrated in the F.I.R registered on 6.3.2024 that all accused fled away from the place of incident towards the colony and on the very date he went to meet them at their house and demanded the robbed Articles, which shows

something fishy on his part which falls within the ambit of malafide intention to book the applicants in the subject crime for extraneous consideration.

7. This stance of the Investigation officer as well as the complainant prima-facie is out of the record, and prima-facie suggests that either both of them are not telling the truth or intend to suppress the facts of the case from this court which is apathy on their part, therefore this court is left with no option but to observe that the case falls within the ambit of malafide intention and further inquiry in terms of section 497(2) Cr. P.C., therefore I refer the matter to DIGP Sukkur (DIGP) to probe a fresh and if the Investigation officer is found involved in the defective investigation to favor someone on political consideration, he be proceeded on the administrative side forthwith. Deputy Inspector General of Police Sukkur shall ensure that during disciplinary proceedings, the police official shall not cause any influence and be placed under strict watch during the proceedings, however, that is subject to providing a meaningful hearing to him on the subject issue, such report of the reinvestigation shall be forwarded to the concerned Magistrate for appropriate orders. In the intervening period, the DIGP Sukkur shall ensure posting of the law graduate Inspectors as Investigating Officer at the Police Stations in Sukkur Division.

8. The Supreme Court in the recent case has held that the law of bail under Section 497 Cr. P.C, wherein it is provided that a person shall not be released on bail if there appear to be reasonable grounds for believing that he has been guilty of an offense punishable with death or imprisonment for life or imprisonment of 10 years, though all the offenses do not fall within the prohibition contained in Section 497 Cr. P.C, however in pre-arrest bail this Court is only required to see the ulterior motives and malafide of the complainant and police and will also tentatively assess the material and can also touch the merits of the case so far as the allegations contained in the F.I.R, and statement of PWs and other material points available on the police file.

9. At the bail stage, the Court has to tentatively form an opinion by assessing the evidence available on record without going into the merits of the case. The deeper appreciation of the evidence cannot be gone into and it is only to be seen whether the accused is prima facie connected with the commission of offence or not. The Court is required to consider overwhelming evidence on record to connect the accused with the commission of the offense and if the answer is in the affirmative he/she is not entitled to grant even post and/or pre-arrest bail. However, in the present case, the record does not show that the applicants were/are previous convicts or hardened criminals.

10. Moreover, the applicant Azhar has been in continuous custody since his arrest and is no longer required for any investigation nor the prosecution has claimed any exceptional circumstance, that could justify keeping him behind bars for an indefinite period pending determination of his guilt. It is well-settled law that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided for the alleged offense. This case does not fall within the prohibitory clause thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within the non-prohibitory clause the concession of grant of bail must favorably be considered and should only be declined in exceptional cases. In the instant case, no exception has been pointed out by the prosecution, thus I do not find this to be a case where bail should be refused as an exception and for this reason, as well as reasons discussed in the preceding paragraphs, the criminal bail application filed by applicant Kamran Ali, seeking pre-arrest bail under Section 498, Cr.P.C. in Crime No.101 of 2024, for offenses under Sections 392, 34, PPC, registered at Police Station 'B' Section, Khairpur is **allowed**, and the interim order dated 21.05.2024, passed by this Court, is confirmed on the same terms and conditions, whereas, applicant Azhar Ali, who is seeking post-arrest bail under Section 497, Cr.P.C. in the aforesaid crime is also **admitted** to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousand) and PR bond in the like amount to the satisfaction of the trial Court.

11. Needless to mention any observations made in the above order are tentative and shall not influence the trial court in any manner. Let a copy of this order be transmitted to the Deputy Inspector General of Police Sukkur for compliance.

12. These are the reasons for my short order dated **02.08.2024** where both the post and pre-arrest bail applications were allowed.

J U D G E

Abdul Basit