

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1428 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant Muhammad Shahbaz son of Umar-u-Din	: through Mr. Shams-ul-Hadi, Advocate Khan, Advocates
The State	: Through Mr. Shoaib Safdar, Assistant Prosecutor General, Sindh a/w SIP Muhammad Dilawar of P.S Korangi, Karachi
Date of hearing	: 21.08.2024
Date of order	: 21.08.2024

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Muhammad Shahbaz seeks his release on post arrest bail in Crime No.250 of 2023 of P.S Korangi, Karachi, for the offences punishable under Sections 395, 397, 353, 324 & 186 PPC. The case has been challaned which is now pending for trial before the Court of 12th Addl. Sessions Judge, Karachi (East) vide Sessions Case No.2799 of 2023 (re-the State Versus Muhammad Shahbaz). Though the charge against accused has been framed by the trial Court on 16.03.2024 but the case could not be concluded due to non-appearance of prosecution witnesses up to 22.08.2024. The applicant filed bail plea before the trial Court which by means of order dated 06.04.2024 was declined; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submitted that applicant was arrested by the police on 28.04.2023; however, nothing incriminating has been shown to have been recovered from his possession; besides, co-accused Awais has already been bailed out by the trial Court. He, therefore, submitted that it is a case of ineffective firing as none from the police had sustained any injury or even scratch on their person. As far as, alleged recovery of one mobile phone and cash amount of Rs.1000/- allegedly robbed from one Muhammad Mohsin, is concerned, same have been foisted upon him by the police in order to strengthen the rope of their false case; hence, case against applicant requires further inquiry and prayed for grant of bail.

4. On the other hand, learned Assistant P.G, Sindh appearing for the State, opposed the bail application on the ground that case of co-accused Awais was on different footings, therefore, it is not helpful for the applicant. He; however, could not controvert the fact that as far as, alleged recovery of one mobile phone as well as cash amount of Rs.1000/- allegedly robbed from one Muhammad Mohsin, is concerned, prosecution has failed to examine even a single witness to support its version though the applicant is in custody right from the date of his arrest viz. 28.04.2023.

5. **Heard arguments, record perused.** No doubt, the applicant was arrested by the police on 28.04.2023; however, the recovery of incriminating has been shown to have been recovered from his possession was belongings of one passerby Mohsin Ali, said PW (victim) has not been examined so far. Per progress report submitted by the trial Court, charge against accused was framed on 16.03.2023 and right from 16.03.2023, not a single witness has been procured by the prosecution, therefore, trial has not been concluded. It is settled principle of law that one cannot be kept behind the bars for indefinite period without progress in his trial. In instant case applicant is rotting in jail right from the date of his arrest viz. 28.04.2023 and not a single witness has been examined by the prosecution. The delay in conclusion of trial is not on the part of applicant or anybody acting on his behalf. As far as, alleged recovery is concerned, victim or any prosecution witness has not bothered to come forward to depose against the accused. Hence, accusation against the accused is yet to be established by the

prosecution after recording evidence and then the trial Court has to determine the same.

6. The upshot of above discussion is, the applicant has successfully made out a good prima facie case for his release on bail within meaning of subsection (2) to section 497 Cr.P.C. Accordingly, instant bail application was allowed by a short order dated 21.08.2024. Consequently, applicant **Muhammad Shahbaz son of Umar-u-Din** was directed to be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

7. It may be pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, if the applicant is found misusing the concession of bail, learned trial Court would be competent to proceed against him as well his surety, according to law.

8. These are the reasons of said short order.

JUDGE

Zulfiqar/P.A