

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1565 of 2024

| <i>Date</i> | <i>Order with signature of Judge</i> |
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| Applicant Muhammad Sohail son of Said Ali Khan | : through Mr. Qadir Hussain Khan, Advocate |
| The State | : through Ms. Amna Ansari, Addl. Prosecutor General, Sindh |
| Date of Hearing | : 03.10.2024 |
| Date of Order | : 03.10.2024 |

ORDER

Muhammad Saleem Jessar, J:- Vide FIR No.491 of 2023 registered with P.S Hyderi Market, Karachi for the offence punishable to Section 397 & 34 PPC, applicant Muhammad Sohail has been shown involved. The applicant was arrested by the police on 04.12.2023 and is facing trial before the Court of 7th Addl. Sessions Judge/MCTC-2, Karachi (Central) vide Sessions Case No.118 of 2024 (re-the State Versus Muhammad Sohail). The applicant filed Criminal Bail Application before the trial Court which after due notice to other side, was declined by way of order dated 07.02.2024. Hence, instant 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(s), therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that name of the applicant does not find place in the FIR; however, he was shown involved in this case

on the basis of alleged recovery of a motorcycle, which according to him, was effected on 04.12.2023. He further submits that said recovery was not effected from his possession but the police in order to strengthen the rope of their false case, have foisted upon him so that he may be punished accordingly. He further submits that the under Section 397 PPC, carries punishment of two folds and the other one is minimum, therefore, by considering lesser punishment, he may be granted bail. In support of his contention, learned counsel places reliance upon the cases of *SOHAIL KHATTAK Versus The STATE (2023 MLD 1924)* and *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 Supreme Court 733)*.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application and while referring to challan of the case, she submits that the robbed motorcycle, involved in this case, was produced during investigation; besides, by view of the CRO, which is available on record, he is not entitled for the bail. She; however, could not controvert the fact that in none of the cases mentioned under CRO accused has been convicted by any Court of law.

5. The complainant of this case was present before the Court on the last date of hearing and stated that he had no means to engage a counsel on his behalf; however, had shown his trust upon the Prosecutor.

6. The trial Court has also submitted progress report dated 10.09.2024, which reveals that charge against accused was framed on 20.04.2024 and right from 20.04.2024 not a single witness has been procured by the prosecution, therefore, trial against accused has not been commenced.

7. **Heard arguments, record perused.** Admittedly, the evidence whatsoever collected by the prosecution, is a robbed motorcycle, which has already been restored to its owner by way of *superdari* in terms of Section 516-A Cr.P.C; besides, the trial against accused has not been commenced due to non-appearance of the witnesses. The offence with which applicant stands charged, carries punishment of two folds and the lesser one is "shall not be less than seven years". It is settled principle of law that when statute provides two punishments, the lesser one should be considered particularly at bail stage.

8. Per progress report, the charge has been framed on 20.04.2024 and right from 20.04.2024 not a single witness has been procured by the prosecution; consequently, trial against applicant has not been concluded and the applicant has been languishing in jail right from the date of his arrest without progress in his trial. It is also well settled by now that one cannot be kept behind bars for an indefinite period without progress in his trial as the expeditious trial is right of every accused.

9. The upshot of above discussion is that applicant has successfully made out a good prima facie case for his release on bail during pendency of the trial. Consequently, instant Criminal Bail Application is hereby allowed. Applicant **Muhammad Sohail son of Said Ali Khan** shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousands Only) and P.R Bond to the satisfaction of learned trial Court.

10. Needless to observe that the observations made hereinabove are tentative in nature and the learned trial Court shall not be prejudiced by any such observations and shall decide the case on merits in view of the evidence available on record.

JUDGE

Zulfiqar/P.A