

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2633 of 2024
(Muhammad Saleem v The State)

Date Order with signature of Judge

Date of hearing and Order:-10.12.2024

Ms. Neelam Javed Arain advocate for the applicant
Ms. Aneela Malik, DPG

ORDER

Adnan-ul-Karim Memon, J:- The applicant Muhammad Saleem has sought this bail application under Section 497 Cr.P.C for a case registered under Section 395 PPC, at the Korangi Industrial Area Police Station. His previous bail application was rejected by the learned V Additional Sessions Judge/MCTC (Malir) Karachi vide order dated 08.11.2024 in Criminal Bail Application No. 5412/2024.

2. The applicant is accused of facilitating a dacoity by brokering stolen goods between the accused Muhammad Nawaz and Muhammad Javed. A private witness has also implicated the applicant in the crime.

3. Learned counsel for the applicant/accused mainly contended that the applicant was falsely implicated, not named in the FIR, and has been in custody without cause. Learned counsel submits that the applicant has been booked on the statement of the co-accused as his name does not transpire in the FIR, however, he has been booked in violation of Articles 38 and 39 of the Qanun-e-Shahadat Order. She has next contended that bail can be granted based on the confessional statement of co-accused before the police; and that nothing has been recovered from the possession of the applicant at the time of his arrest. The lawyer requested post-arrest bail for the applicant.

4. Learned DPG appearing on behalf of the State has argued that all PWs have implicated the applicant/accused in the commission of the offense. She has opposed the bail application on the premise that the applicant/accused facilitated the co-accused person, who had committed dacoity and robbed goods/clothes and had made a deal of such robbed articles between co-accused Muhammad Nawaz and Muhammad Javed, further, the private

witness named Muhammad Aslam has also fully implicated the applicant/accused in this case with his specific role a broker of alleged robbed goods/cloths so also there appears the possibility of the applicant in commission of dacoity and there is no ill will on the part of the complainant and the police. He prayed for the dismissal of the bail application.

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

6. Tentative assessment of the record reveals that the alleged incident took place on 17.02.2024 and reported to the police on the same day with the allegation that five unknown persons robbed his loaded with goods. During investigation police recovered the vehicle and arrested co-accused Muhammad Nawaz, who disclosed the name of the applicant to be person who well acted as broker of robbed goods/cloths, such accusation was supported by the statement of PW Muhammad Aslam. This court on the aforesaid allegation granted post-arrest bail to co-accused in Bail application No. 1157 of 2024 vide order dated 04.07.2024.

7. It appears from the record that the applicant is not nominated in the FIR and no recovery has been effected from his possession. The only allegation against the applicant that facilitated the co-accused who had named him in the present crime, this factum was recorded by the trial court in the order. The alleged extra-judicial confession of co-accused made before police, if any, is not admissible under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, that no confession made to a police officer shall be proved as against a person accused of any offence, while Article 39 emphasizes that, subject to Article 40, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Seemingly, a confession made before the police is not made admissible by dint of the aforesaid provisions of the Qanun-e-Shahadat Order 1984 in order to preserve and safeguard the philosophy of safe administration of criminal justice and is also based on public policy. In the aforesaid backdrop, I am sanguine that the case of applicant requires further inquiry to prove his guilt which can only be thrashed out after recording of evidence

in the trial Court. On the aforesaid proposition I am guided by the decision of the Supreme Court in the case of *Ikram-ul-Haq v Raja Naveed Sabir & others* (2012 SCMR 1273).

8. Section 391 PPC provides that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity". The punishment under Section 395 is that whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to a fine. Section 393 PPC pertains to an attempt to commit robbery which is punishable with R.I for a term that shall be extended up to 07 years whereas Section 397 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than 07 years.

9. The rule of consistency applied in present bail matter on the premise that the co-accused has already been granted bail by this court. This right to equality before the law ensures that persons similarly placed in similar circumstances are to be treated in the same manner. In other words, among equals the law should be equally administered; the like should be treated alike.

10. Keeping in view the punishments provided in the above Section, while deciding the bail application lesser sentence out of an alternate sentence may be taken into consideration for determining whether the case falls under the prohibitory clause of Section 497(1) Cr. P.C, I am of the considered view that the case of the applicant requires further inquiry.

11. The record shows that the applicant/accused is not a previous convict. Moreover, the applicant/accused has been in continuous custody since his arrest and he is no longer required for any investigation nor the prosecution has claimed any exceptional circumstance, that could justify keeping him behind the bars for an indefinite period pending the determination of his guilt.

12. In view of the peculiar facts and circumstances of the case, I am of the tentative opinion that prima facie, the applicant/accused has succeeded in bringing his case within the purview of further inquiry and as such is entitled to bail. Resultantly, this bail application is allowed and the applicant is granted post-arrest bail subject to furnishing his solvent surety in the sum of Rs. 200,000/- (Two hundred thousand only) and PR bond in the like amount to the satisfaction of the trial Court.

13. Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, the applicant/accused during proceedings before the trial Court, misuses the concession of bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

14. These are the reasons in support of my short order dated 10.12.2024.

JUDGE

Shafi