

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail No.S-488 of 2024

Applicants: 1. Parwez Ahmed son of Arbab Ali
2. Abdul Qadir son of Arbab Ali
Through Mr. Muhammad Afzal Jagirani, Advocate.

Complainant: Waqas Ahmed son of Muhammad Aitbar Dayo
Through Mr. Abdul Ghani Bijarani, Advocate.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General,
Sindh.

Date of Hearing: 31.10.2024

Date of Order: 31.10.2024

ORDER

ARBAB ALI HAKRO, J.:- Through instant Criminal Bail Application, the applicants seek Bail Before Arrest in the case emanating from F.I.R No.229/2024, registered at Police Station A-Section Kandhkot under Sections 457, 380, 506/2P.P.C. Their bail plea has been declined by learned Sessions Judge, Kashmore at Kandhkot vide Order dated 24.08.2024, hence this bail application.

2. The facts in brief, as per F.I.R., are that the complainant and accused Parwez Ahmed were friends. According to the complainant, he had to visit Karachi for medical treatment of his ailing mother. He handed over the keys of the house to accused Parwez Ahmed after pointing household articles, including 60 tola gold ornaments and cash of Rs.50,00,000/- in the presence of the brother of the complainant Iqbal Ahmed, and he proceeded on 15.06.2024. Later, on 17.06.2024, accused Parwez Ahmed made a phone call to the complainant, informing him that 60 tola gold and cash, as discussed above, had been stolen by unknown thieves. After intervention of the naik mard, the accused admitted the commission of offence and assured the complainant to return the said property but later demanded Rs.30 Laks and after his refusal, he came at the house of the complainant along with co-accused Abdul Qadir and threatened the complainant of dire consequences if again demanded the return of the property. Hence, this F.I.R.

3. Learned counsel for the applicants has contended that the applicants/accused are innocent and have been falsely implicated by the complainant with malafide intention and ulterior motives; that there is delay of 41 days in lodgment of the F.I.R. and no plausible explanation has been furnished by the complainant; that nothing incriminating has been recovered from the applicants/accused; that the offence with which the applicants/accused is associated does not fall within the ambit of prohibitory clause of section of 497 Cr.P.C; that there is no witness of the incident and the offence is unseen. Therefore, interim pre-arrest bail granted to the applicants/accused vide Order dated 28.08.2024 may be confirmed on the same terms and conditions. In support of his contentions, learned counsel has relied upon the case law reported as *2019 S.C.M.R 1152 (Arsalan Masih Vs The State)*.

4. Learned counsel for the complainant has vehemently opposed the confirmation of bail to the applicants/accused on the ground that the names of the applicants/accused are mentioned in the F.I.R. with a specific role and a huge amount of valuables are involved. Therefore, the applicants/accused are not entitled to the concession of bail. In support of his contentions, learned counsel for the complainant has relied upon the case law reported as 2012 YLR 1296 (*Umar Hayat v/s. The State and another*) and 2004 YLR 2239.

5. Learned Deputy Prosecutor General Sindh has frankly conceded to the grant of bail to the applicants/accused on the ground that the offence does not fall within the prohibitory clause of section 497 Cr.P.C.

6. Heard learned counsel for the applicants, learned Deputy Prosecutor General Sindh, and perused the material available on record.

7. The record reveals that the alleged incident is unwitnessed, as nobody saw the commission of the alleged crime, *prima facie* there is no direct evidence to connect the applicants/accused in the commission of the alleged offence. According to the FIR, the incident occurred on 17.06.2024, while the complainant lodged the FIR on 31-07-2024 after a delay of about one and a half months. No doubt, a delay in lodging an FIR per se is not a ground for granting bail, but the complainant himself admitted in the FIR that he had friendly terms with accused Parwez; therefore, such a delay may justify a presumption that the accused has been implicated after deliberation

and consultation. The complainant has narrated in the FIR that before going to Karachi for his mother's treatment, he called applicant Parwez to his house, showed him gold ornaments and cash and handed over the house keys to him. On 17-06-2024, Parwez allegedly informed the complainant that the locks of his house were broken and the articles were stolen. First, it does not appeal to a prudent mind that the complainant would show the applicant/accused his valuables and then hand over the keys if he suspected any foul play. Secondly, if the applicant/accused Parwez had indeed committed the theft, it is beyond comprehension that he would inform the complainant about it over the phone. These factors if viewed together, make the case of applicants/accused one of further enquiry falling within the ambit of Section 497(2) Cr.P.C.

8. It is settled law that while granting post and pre-arrest bail, the merits of the case can be touched upon by the Courts. 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 offence with which applicants/accused are charged does not fall within the prohibitory clause of section 497(1), Cr.P.C, and grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception. A person's liberty is a precious right that cannot be taken away without exceptional foundations.

9. In view of the above, instant Criminal Bail Application is allowed. The interim pre-arrest bail earlier granted to the applicants/accused vide Order dated 28.08.2024 is hereby confirmed on the same terms and conditions.

10. Needless to mention, the observations made hereinabove are tentative and would not influence the learned Trial Court while deciding the case of either party at trial.

Judge

Manzoor