

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 2589 of 2024

Date

Order with Signature of Judge

For hearing of Bail Application

03.02.2025

Mr. Amanullah, Advocate along with Applicant (on bail).
Syed Mumtaz Ali Shah, Assistant Prosecutor General, Sindh.

ORDER

ALI HAIDER 'ADA'-J:- Through this bail application, applicant Jahanzaib seeks pre-arrest bail in Crime No.509 of 2024 for the offence punishable under Section 395 PPC registered with P.S Ferozabad, Karachi, lodged by complainant Irfan. The applicant preferred his anticipatory bail before the Court of Sessions wherefrom it was assigned to IInd Addl. Sessions Judge, Karachi (East), who after hearing the parties, has turned down his prayer through order dated 06.11.2024; hence, instant bail application has been maintained.

2. The brief facts of the prosecution's case as per FIR are that on 06.08.2024 at about 02:45 P.M complainant along with his witnesses were proceeding towards Sindh Muslim Society where two unknown persons on a motorcycle came in front of them and on pointation of the weapon, they robbed/ committed decoity of Rs.10 million, as such incident was reported to the police on the 06.08.2024 at about 08:00 PM. Further the prosecution established its case that co-accused Alam Zaib, who was arrested by the police on 11.08.2024, disclosed the name of the present applicant as well as others that they accompanied with each other and thereafter such incident was taken place. The prosecution story is also dependent on a CCTV camera footage in which two persons were shown

on a bike proceeding to the place of incident. Further the prosecution also examined through confessional statement of co-accused Waheedullah who was arrested on 17.08.2024 and by way of a notice under Section 160 Cr.P.C by the investigation officer held identification parade.

3. Learned counsel for the applicant submits that neither the name of the applicant is mentioned in the FIR nor any description has been given in the FIR, further the prosecution case is totally dependent on a CCTV camera footing which even though is not clear to show the presence of present applicant. He further submits that co-accused namely Alam Zaib was granted post arrest bail by the learned trial Court vide order dated 29.08.2024 and the case of present applicant is on better footings because initially he was involved on the confessional statement of co-accused Alam Zaib. He further submits that it is enough to show that police has ulterior motives to record any cogent reasons or to collect any believable evidence in order to connect the applicant with the offence. In last, learned counsel prays for confirmation of the bail granted to applicant.

4. Learned Assistant P.G, Sindh appearing for the State, supports the impugned order and submits that on a confessional statement of co-accused, the present applicant has been implicated. Next submits that co-accused namely Waheedullah was arrested by the police on 17.08.2024 and recovery was also effected from him. Therefore, in such connivance, the present applicant is not entitled for the concession of pre-arrest bail. He further submits that applicant is failed to show any malafide or enmity with the police, which is a basic ingredient.

5. Heard arguments and perused the material available on record.

6. It is the duty of investigation officer that once he issued notice under Section 160 Cr.P.C to the complainant for identification parade, then in order to identify the present applicant also held such parade and there is nothing mentioned in the order sheet that present applicant did not join the investigation. Secondly, each and every accused is responsible for its own circumstances and the recovery effected from other co-accused. The confessional statement of co-accused Alam Zaib was recorded and he has been granted bail by the trial Court vide order dated 29.08.2024. Such

bail order was placed by the learned counsel at the time of arguments. No doubt the offence is heinous one but in order to connect such offence with the applicant, it is a prime duty of the investigation officer to collect a corroborative piece of evidence and if accused Alam Zaib made any kind of submission before the investigation officer, then the investigation officer shall take efforts to collect the other evidence but the same is flaw of the investigation and even in the police papers there is no any record is mentioned that he made any kind of application for recording statement of co-accused Alam Zaib as well as Waheedullah for their confessional statement before the Magistrate. The part of the malafide and ulterior motives are the basic ingredients but once the case is made out and there is flaw in the investigation then matter pertains for further enquiry.

7. In view of such circumstances, the applicant has made out his case for confirmation of his bail. Accordingly, instant bail application is hereby allowed; interim bail granted earlier to applicant on 07.11.2024 is hereby confirmed on same terms and conditions.

8. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may tamper with prosecution's evidence then the trial Court would be competent to take legal action against him as well as his surety.

9. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Zulfiqar/P.A