

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-468 of 2007.

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| DATE OF HEARING | ORDER WITH SIGNATURE OF HON'BLE JUDGE |
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1. For orders on office objection 'A'.
2. For Hearing of Bail Application.

20.11.2017.

Mr. Asif Ali Sanghroo, advocate for the applicant along with applicant.

Mr. Khadim Hussain Khooharo, Addl. P. G along with ASI Niazmuddin Jamali of PS Dokri, I.O of the case.

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Through this Crl. Bail Application, applicant Ghulam Murtaza Dero son of Ali Muhammad, seeks pre arrest bail in Crime No.35 of 2017 registered under section 381/A, 215, PPC at Police Station Dokri. His earlier bail before arrest application, bearing Crl. Bail Appln. No.1118 of 2017 was heard and dismissed by the learned Sessions Judge, Larkana, vide order dated 18.09.2017. He was admitted to ad-interim bail, vide order dated 26.09.2017, ^{now} he seeks confirmation of his bail.

Briefly stated, the prosecution case, as narrated in the aforesaid FIR lodged by one Sukh Dev son of Manik Mal on 10.09.2017, are that on 07.04.2017 he parked his motorcycle Hi-Speed (Applied for Registration) at Government Boys High School Dokri, where he was serving as Headmaster and when after performing his duties he came out, he saw his motorcycle missing. Thereafter, he made enquiry and it came into his knowledge that the applicant along with two other persons committed the theft of his Motorcycle. Thereafter he, along with his friend Sultan Ahmed went to the Otaq of applicant where his brother Abdul Hakeem asked him that the said Motorcycle will be given to him on payment of Rs.10,000/- as gift, which he paid to him, but even thereafter his Motorcycle was not returned to him.



Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that P.W Sultan Ahmed has sworn affidavit before the trial Court that he was not accompanied by the complainant to the Otaq of the applicant; that there is delay of more than five months in lodging the FIR and no plausible explanation has been furnished by the complainant for the said delay; that co-accused Abdul Hakeem, the brother of the applicant has already been granted bail by the learned trial Court vide order dated 09.10.2017, copy whereof is placed on record; that the alleged offence being punishable for seven years does not fall within the prohibitory clause of Section 497, Cr.P.C; that the police has already submitted the challan and in case the applicant is arrested he shall be humiliated, disgraced and maltreated by the police on the instigation of the complainant who has malafidely lodged the false FIR against the applicant.

On the other hand learned Addl. P. G has opposed this bail application on the ground that the applicant/accused is nominated in the FIR with specific role; that brother of the applicant, namely, Abdul Hakeem, the co-accused despite receiving ten thousand from the complainant has not returned the Motorcycle to complainant; that the ingredients for grant of pre arrest bail to applicant/accused is missing in this case. He, however, has admitted that the documents of the alleged motorcycle is not available with the prosecution file. ASI Nizamuddin, I.O of the case is present and states that the complainant did not hand over him the copy of documents of the Motorcycle.

Heard learned counsel for the applicant as well as learned Addl. P.G and perused the material available on record.

It is an admitted position that there is delay of five months in lodging the FIR, for which the complainant has not furnished any plausible explanation. Even during course of investigation, the complainant did not supply the photo-copy of documents of alleged

Motorcycle to verify his claim with regard to ownership and its existence and only Engine number and chases number have been given in the FIR. The alleged offence being punishable for seven years does not fall within the prohibitory clause of section 497, Cr.P.C, which entitles the applicant for the grant of bail. Even it is considered that no malafide or ulterior motive has been alleged by the applicant for grant of pre-arrest bail, no purpose shall be served if merely on such ground the applicant is taken into custody and thereafter he is admitted to post arrest bail. Hence this CrI. Bail Application is allowed by confirming the interim order for grant of bail to applicant dated 26.09.2017 on the same terms and conditions.

However, in case the applicant/accused misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him the requisite notice. D