

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr Bail Application No.S-1017 of 2024

Applicant(s): Nizam @ Nizoo son of Ghulam Nabi Tagar,
through Mr. Rameez Ali Lund, Advocate

Respondent: The State, through Syed Sardar Ali Shah,
Additional Prosecutor General along with
complainant Allah Bux

Date of hearing: 06.02.2025
Date of decision: 06.02.2025

ORDER

RIAZAT ALI SAHAR, J- Through captioned criminal bail application, the applicant seeks pre-arrest bail in FIR No.91/2024, registered at Police Station Mithiani, District Naushaheroze, for the offences under sections 381-A, 215 PPC. The applicants on having been refused pre-arrest bail by learned Sessions Judge, Naushahro Feroze, have sought for the same relief from this Court by way of instant bail application u/s 498-A Cr.P.C.

2. It is alleged that the present applicant, along with the co-accused, formed an unlawful assembly and, in furtherance of their common object, committed theft of a 15-horsepower solar water motor worth Rs.80,000/-belonging to the complainant. They then demanded Rs.50,000/-as *bhung* money for the return of the stolen property, leading to the registration of this FIR.

3. Learned counsel for the applicant has contended that the applicant is innocent and has been falsely implicated in this case; that there is an inordinate and unexplained delay of one month and four days in lodging the FIR, despite the fact that the distance between the place of the incident and the police station is hardly 7-8 kilometers, which suggests the possibility of consultation; that the incident is entirely unseen and un-witnessed, as no one has observed the commission of the offence, thus necessitating further inquiry; the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C; that co-accused Sadam Ali and Ghulam Ali, whose cases stand on the same footing as that of the present applicant, have already been granted bail, and therefore, on the principle of consistency, the present applicant is also entitled to the concession of bail.

4. Learned Additional Prosecutor General conceded for confirmation of pre-arrest bail to applicant/accused.

5. I have heard the learned counsel for the respective parties and perused the record available before me.

6. Admittedly, the incident was neither seen nor witnessed, as no member of the complainant party observed the applicant/accused committing the theft. There is an inordinate delay of approximately one month and four days in lodging the FIR, and the complainant has not provided any explanation for this delay. A perusal of the record indicates that, apart from the complainant's statement, no evidence has been presented to connect the applicant/accused with the commission of the offence. The case has already been challaned, and there is no allegation that the applicant has misused the concession of interim pre-arrest bail. Furthermore, co-accused *Sadam* and *Ghulam Ali*, who played almost an identical role, have already been granted post-arrest bail by the learned trial Magistrate. In these circumstances, taking the applicant into custody would serve no useful purpose, especially when he would likely be granted bail under the rule of consistency.

7. In view of the above discussion, the applicant/accused has made out a good case for the confirmation of bail in light of subsection (2) of Section 497 Cr.PC, as well as on the principle of the rule of consistency. Therefore, the instant bail application is allowed, and as a result, the interim pre-arrest bail already granted to the applicant/accused vide order dated **31.12.2024** is hereby confirmed on the same terms and conditions. However, if the applicant/accused misuses the concession of bail, the trial court shall be competent to cancel his bail without making any reference to this Court.

8. Needless to mention here that observations, if any, made hereinabove are tentative in nature and would not influence at the trial Court while deciding the case of the applicant/accused on merits.

J U D G E

M.Ali*