ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.483/2009

Date	Order with signature of Judge

1) For order on CMA No.1816/2009 [U/A].
2) For hearing.

27.5.2009.

Mr. Kanwar Altaf, for applicant.
Mr. Sardaruddin, A.P.G.

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1. Allowed.

2. This order is directed against the impugned order dated 19-1-2009, passed by learned II-Additional Sessions Judge, South Karachi in Sessions Case No.235/2008 in Crime No.177/2008, registered under section 392/34 PPC at P.S. Darakhshan Karachi.

The brief facts of the case are reproduced as under:

> "As per FIR lodged by the complainant Saeed Anwar are that on 03.04.2008 he alongwith his friends came at Defence Housing Authority in the Alto Car bearing No.AHA-697 for some work. As soon as when they reached in front of Village Hotel and took turn towards Ittehad Road, two persons came on 125 Motorcycle and they dashed with the car and got stopped his car. They got them deboarded from the car o n gun point and snatched his car and fled away. Both the culprits were having slim body and moustaches, once of them drove away his car and second other fled away on the motorcycle. They ran away towards Khayaban-e-ittehdad. They also snatched six mobile phones from them. The complainant also informed at 15 Police Center. The complainant also stated that they can identify the culprits if they are produced before them."

Learned counsel for the applicant/accused has submitted that he should be enlarged on bail on the following reasons:-

(i) No specific role has been assigned to him in the FIR,

(ii) No identification parade was held as required under Article 22 of the Qanoon-e-Shahadat Ordinance 1984,

(iii) that since it was a case of joint recovery it cannot be said that alone the applicant/accused was a person responsible if at all.

In respect of bail being granted in similar cases to the joint accused, he has relied on the case MUHAMMAD DANISH v. STATE (2006 YLR 2824). With regard to the failure of holding an identification parade entitling him to bail, he has relied on the case FARMAN ALI v. STATE (1997 SCMR 971). He has further contended that since this is bail matter, which is available under Section 497 Cr.P.C. bail should be the rule rather than exception and has relied on the case TARIQ BASHIR v. STATE (PLD 1995 SC 34). He has also stressed that each case must be decided independently and not be confused with other case. He has placed reliance on a case STATE v. KABEER KHAN (PLD 2005 SC 364). He has also submitted that in statement, which the applicant/accused made to the police, cannot be safely relied on and that no recovery of weapons was made from his possession which have been planted by the police as this is their usual modus operandi.

Learned counsel for the State vigorously opposes the grant of bail in this case. He has referred to the challan whereby after the search of the accused a 30 bore pistol alongwith five live rounds were recovered, which amounted to offence under section 13-D of the Arms Ordinance. Furthermore, in the challan the accused disclosed that he was a part of the gang of one Ghulam Rasool, who is a notorious wring leader in a car snatching operation.

Learned counsel for State emphasized that accused is habitual and professional car snatcher and FIR has been registered against him in many other cases for car snatching. There is also 23 FIRs registered against Ghulam Rasool, who is the leader of the gang of which accused allegedly belongs to. With regard to statement before the police he has relied on Section 40 of the Qanoon-e-Shahadat Order, 1984. He emphasized that these are crimes against the Society and as such bail should be refused on this ground alone. He contends that specific role was assigned to the accused since under Section 34 PPC the accused had a common intention.

I have considered the arguments of the learned counsel and reviewed the various case laws without going into the merits of the case which will need to be determined at trial.

The bail is against impugned order dated 19.1.2009, passed by IV-Additional Sessions Judge Karachi (South), which, in essence, came to the conclusion that it was pre-mature stage to grant the bail and, therefore, declined the bail application, against which this bail application has been filed. The learned trial Court had indicated that the accused could repeat his bail application after recording of evidence of the complainant. This Court has power to refer this matter back to the Sessions Court in order to allow the applicant to again file bail application before the lower Court. However, since five months have been passed and the complainant has still not recorded his statement, it would seem that this would just unnecessarily delay the accused/applicant's bail application.

No doubt, State counsel has referred two cases in which the accused has been committing continuously crime against the Society, however, none of these cases have yet been proven against the accused. I agree with the learned counsel for the accused that each case must be decided on its own facts and circumstances and not by reference to other cases, especially those which have not been proven. It is for the State to prove its case against the accused and to do so expeditiously. The fundamentals of the grant of the bail concerns whether the accused will abscond, interfere with prosecution witnesses or commit other crimes. In this case it seems to be a limited chance of any such occurrence. Bail should be the rule rather than exception as it would be unjust to confine an accused person in jail for a long period of time whilst the prosecution dragged its feet in proceeding with the case I, therefore, grant bail to the applicant/accused subject to a solvent surety in the sum of Rs.1,00,000/= (One Lac) and P.R. Bond in the like amount with the Nazir of this Court for satisfaction.