

ORDER SHEET
 IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
 Cr. Bail Appln. No.S-41 of 2019
 Cr. Bail Appln. No.S-50 of 2019

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
08.03.2019.	

Mr. Zahid Hussain Chandio, advocate for applicants in both matters, along with applicants (on bail).

Mr. Sharafuddin Kanhar, APG.

Mr. Ashfaque Hussain Abro, advocate for complainant in both matters.

By this common order, I would prefer to dispose of the captioned bail applications bearing No.S-41 and S-50 of 2019 filed by applicants Fida Hussain Chandio and Ameer Ali Chandio, as both arise out of one and same crime and common question of law and facts is involved therein.

2. The applicants through these applications seek their admission on pre-arrest bail in Crime No.148/2018, registered at Police Station Civil Line, Larkana, under Sections 380, 381, 34, PPC. Anticipatory bail applications bearing No.1871/2018 and 15/2019 filed by the applicants before the first forum have been declined by means of common order dated 15.01.2019. As is manifest from the record, the case after investigation has been challaned by the police on 05.01.2019, which is now pending for trial in the Court of III-Civil Judge & Judicial Magistrate, Larkana vide Criminal Case No. nil of 2019 re-State v. Fida Hussain Chandio & others.

3. The facts of the prosecution case as unfolded by the complainant are that he is working as 20-Grade Officer in Sindh Secretariat, Karachi and for his residence Bungalow No.6-A is allotted by Civil Hospital, Larkana to his wife, who is Assistant Professor. One Mushtaque Hussain Chandio has been working at their house as house-servant. They are also having some agricultural land. Britain currency of 18000 pounds and 500,000 rupees of Pakistani currency were lying in the Almirah in their house, which was locked. On 17.12.2018, he along with his nephew Nisar and Dhani Bux went together to Resham Galli for their work, while his wife was out of home; their servant Mushtaque was

present in the house. After finishing their work when they reached outside the bungalow, they saw at about 5.00 p.m. his house servant Mushtaque Hussain having black shopper in his hand containing some articles and his brother Ameer Ali as well as Fida Hussain and Faiz Mohammad came out from his bungalow, to whom he enquired, upon which Mushtaque disclosed that he was going to see off his brother at bus stop. As and when the complainant party entered into the house, they found the lock of Almirah, wherein currency was lying, was broken and currency lying therein was missing. He came out and followed the accused persons, but could not trace them. On notice, he found certain articles, detail whereof is mentioned in the FIR, were missing and stolen away. He then approached to the elders of the accused, but they kept him on false hopes. Ultimately, the complainant lodged instant FIR on 23.12.2018.

4. Mr. Zahid Hussain Chandio, learned Counsel for the applicants, submits that the FIR is delayed for about 07 days and the offence as alleged is unseen, besides, the punishment provided by law for the offence under Sections 380, 381, PPC is upto 07 years and thus does not fall within the prohibitory clause of Section 497, Cr.P.C. In support of his contentions, he has relied upon the cases of *Tarique Bashir v. The State* (PLD 1995 SC-34) and *Mohammad Tanveer v. The State* (PLD 2017 SC-733). He, therefore, prays for confirmation of interim pre-arrest bail of applicants.

5. Learned APG appearing for the State submits that the applicants are nominated in the FIR and they being house-servants of the complainant, who is working in higher grade in the Provincial Government, have committed theft of valuables from his house and have also committed breach of trust and thus do not deserve extraordinary concession in shape of pre-arrest bail.

6. Mr. Ashfaque Hussain Abro, learned Counsel for the complainant, also opposes bail application and submits that due to non-arrest of the accused, recovery of stolen articles of the complainant, which include hard cash, has not been effected from their possession, besides, after grant of interim pre-arrest bail the applicants/accused have been issuing threats to the complainant party to surrender or

withdraw from the instant case. In support of his contentions, he has placed reliance upon the case of *Malik Nazir Ahmed v. Syed Shams-ul-Abbas* (PLD 2016 SC 171) and case of *Ali Dino Gahoti v. Director General NAB & others* (2017 P.Cr.L.J Note-193 at page 202).

7. Confronting with the contentions of learned Counsel for the complainant, Mr. Zahid Hussain Chandio has focused upon annexure-D, at page 39 of the file of Cr. Bail Application No.S-50 of 2019 filed by applicant/accused Ameer Ali, and submits that an application dated 20.12.2018 was moved by applicant Ameer Ali before SSP, Kamber-Shahdadkot, stating therein that the complainant party of this case had assaulted upon them and due to their influence their case was not being registered by the concerned police, which was marked by the SSP concerned bearing No.CC 2004, dated 20.12.2018 and submits that the application moved by applicant Ameer Ali is before lodgment of instant FIR, therefore, the malafide on the part of complainant is very much evident.

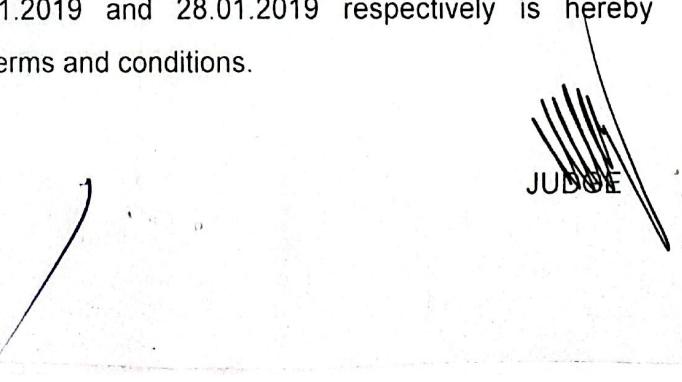
8. I have heard learned Counsel for the applicants, learned APG for the State as well as learned Counsel for the complainant and have gone through the material made available before me on record.

9. It is admitted that the alleged offence is unseen and even shopper allegedly seen by the complainant in the hand of applicant/accused Mushtaque outside of his bungalow was not verified and he presumed that it was containing certain articles, but he did not mention in the FIR that the shopper found in the hand of applicant/accused was containing currency as well as other articles allegedly stolen from his house. The offence with which the applicants have been charged carries maximum punishment upto 07 years and the same is being tried by Magistrate. The citation relied upon by learned Counsel for the complainant i.e. case of *Malik Nazir Ahmed* (supra) is to the effect that learned Judge of the Lahore High Court while granting pre-arrest bail to accused therein held that the offence under Section 489-F, PPC did not entail any recovery to be effected from the accused and if recovery is not to be effected from an accused in a criminal case then he cannot be refused pre-arrest bail and in this regard he placed reliance upon the case of *Abdul Sattar v. The State* (PLD 2013 Lahore

173), which was authored by him and the said observation of learned Judge was disapproved by the Hon'ble Supreme Court and case was remanded to the High Court for fresh decision; however, the accused therein was directed to remain on interim bail until final decision of the case. As far as case of *Ali Dino Gaholi* (supra) is concerned, in the said citation the Division Bench of this Court had refused pre-arrest bail to an accused who was facing charges of the corruption before NAB authorities and therefore, he was declined bail. In the present case, the malafide in view of the application moved by the applicant to SSP, Kamber-Shahdadkot can be gathered and besides, the FIR is also delayed for about 07 days, for which no plausible explanation has been furnished by the complainant. In the case *Mohammad Tanveer* (supra), the Hon'ble Supreme Court while granting bail to the petitioners therein and discussing the issue, which seems to be identical in nature, held in para-6 of the judgment as under:-

"6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

10. In my humble view, the case in hand requires further enquiry within the meaning of subsection (2) of Section 497, Cr.P.C and while placing reliance upon the case of *Muhammad Arshad v. Muhammad Rafique* (PLD 2009 SC 427), these applications are allowed. Consequently, the interim pre-arrest bail granted to the applicants on 22.01.2019 and 28.01.2019 respectively is hereby confirmed on same terms and conditions.



JUDGE