

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-134 of 2024

(Jiando @ Dado @ Porho Vs. The State)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing & Order 08.08.2024

Mr. Mir Parvez Akhtar Talpur, Advocate for the applicant
Mr. Ali Hassan Chandio, Advocate for complainant a/w complainant
Mr. Shahzado Saleem, A.P.G Sindh a/w I.O of the case.
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ORDER

Adnan-ul-Karim Memon, J. The Applicant Jiando @ Dado @ Porho is seeking post-arrest bail in F.I.R No.09 of 2024 for the offense under section 397, 34 PPC at Police Station Bodar Farm. During investigation investigating officer added Section 337 A (i) PPC in the chargesheet.

2. His earlier bail plea was declined by the trial court vide order dated 25.5.2024 on the premise that the applicant is actively nominated in FIR for committing robbery and causing lathi injury to victim Mushtaque, which is supported by medical evidence.

3. Learned counsel for the applicant/accused argued the case against the applicant/accused is false, fabricated, based on malafide, and concocted. He also claimed that no such incident had taken place and this is the reason there is ten days delay in lodging FIR, and same has not been explained; that the offence for which the applicant is charged, does not fall within the prohibitory clause of Section 497(2) Cr.P.C. Therefore, grant of bail in cases covered under the said provision is rule and refusal is an exception. Learned counsel emphasized that the injuries allegedly sustained by the victim Mustaque as per medical certificate are declared as Shuja-e-Khafifa which are bailable. As far as application of section 397 PPC, is concerned same is to be established by the prosecution after recording evidence of its witnesses, in such circumstances, a case for grant of post-arrest bail on point of malafide in favour of the applicant obviously is made out. Learned counsel also contended that as per the contents of the FIR, neither any firearm weapon was used at the hands of applicant during the said alleged offence, so Section 397 PPC is not attracted. All the mashirs are interested persons while the occurrence is 2000 hours (day light occurrence) but there is no private witness, hence the case of the applicant/accused requires further inquiry. He added that the applicant/accused is not previous convict nor a hardened criminal. He next contended that the applicant/accused has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period

pending determination of his guilt. He has lastly prayed that the applicant/accused may be admitted to bail.

4. Learned Additional Prosecutor General assisted by the learned counsel for the complainant vehemently opposed the bail application on the grounds that the applicant/accused has been arrested and his role of causing injury to victim Mustaque is very much clear in the commission of offence. He has lastly prayed for dismissal of the bail application.

5. I have considered the arguments advanced by learned counsel for the applicant/accused and learned Additional Prosecutor General assisted by the learned counsel for the complainant as well as perused the material available on the record.

6. The applicant is charged with an offense punishable under Section 397 PPC, which carries imprisonment of up to seven years. The point, that requires consideration at the bail stage, is that as to whether there is material in the case is sufficient to refuse bail to the applicants under Section 397/34 PPC. It shall be advantageous to reproduce Section 397 PPC herein below:-

“397. Robbery or dacoity, with attempt to cause death or grievous hurt. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”

7. During the investigation, the prosecution has applied in FIR Section 397 PPC and 337 A (i) PPC in the chargesheet. Whereas Section 393 PPC pertains to an attempt to commit robbery which is punishable with R/I for a term that shall be extended up to seven years, whereas Section 397 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than seven years, however, the prosecution was only bother to invoke Section 397 PPC without corresponding offense. It is well settled that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided for the alleged offense. Since the alleged recovery has not been made from the applicant and it is yet to be proved whether the applicant robbed the complainant and injured the victim as portrayed or otherwise and all the aspects of the case shall be taken care of by the trial Court. It is also the case of the prosecution that applicant was subsequently arrested and after his arrest, holding of test identification parade was necessary in terms of the judgment of the Supreme Court in the case of Farman Ali v. The State [1997 SCMR 971], which factum is missing in the present case, the reasons best known to the investigation officer, who allegedly narrated that complainant disclosed his identity when he was arrested if this is the stance of the investigating officer let this aspect be taken care of by the trial Court after examining him. The longest term of imprisonment provided for the offenses under Section 397 P.P.C. carries punishment with imprisonment for not less than seven (07) years and does not fall within the prohibition contained in Section 497(1) Cr. P.C. The apex Court in the case of Tariq

Bashir vs. The State (PLD 1995 S.C 34) has held that the grant of bail in bailable offenses is a right while in non-bailable offenses is concession/grace. The applicants/accused have been in jail since and is no longer required for investigation, moreover, there is nothing on record that the present applicant is previous convict.

8. Going ahead on the subject, there is no cavil to the proposition that courts, by the very purpose of their creation, are required to do justice. The expression “justice” in its broadest sense, is the principle that every individual must receive, which he deserves according to law. Justice is a notion described as the constant perpetual will to allot to every man what is due to him. Every criminal wrong must be reciprocated with procedural stringency and penal consequences. However, courts, even at the bail stage, are not bound by the provisions of law applied in the FIR rather have to see the offence applicable from the contents of the prosecution case. Additionally, it is also a well-settled principle of law that mere heinousness of offense is no ground to reject the bail plea. The basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise.

9. The essential prerequisite for the grant of bail by sub-Section (2) of Section 497, Cr.P.C. is that the Court must be satisfied based on the material placed on record that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life. The condition of this Clause is that sufficient grounds exist for further inquiry into the guilt of the accused, which would mean that the question should be such, that has nexus with the result of the case and can show or tend to show that the accused was not guilty of the offense with which he is charged.

10. Primarily, grant or rejection of bail is a discretionary relief but such discretion should be exercised fairly and judicially. The word discretion when applied to Court means sound discretion judiciously guided by law and to lessen the hardship of the people. For what has been discussed above, prima facie the applicant has made out a case for further inquiry into their guilt within the meaning of Section 497(2), Cr.P.C.

11. For the foregoing reasons, the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.20,0000/-(Rupees Two hundred thousand Only) each and P.R Bond in the like amount to the satisfaction of trial Court.

12. Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case.

JUDGE