

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 691 of 2016

Applicant: Through Mr. Maroof Hussain Hashmi, advocate.

The State: Through Mr. Abrar Ali Khichi, APG alongwith SIP Muhammad Aijaz Awan, SIU/CIA

Date of hearing: 07.06.2016

Date of Order: 07.06.2016

O R D E R

ABDUL MAALIK GADDI, J : Having remained unsuccessful in obtaining his release on bail from trial Court in Crime No.439/2015 registered under Sections 395 PPC at P.S. Ittehad Town, Karachi, the applicant Asif Baig is now seeking his release on bail through instant bail application.

Facts necessary for the disposal of this bail application are that the present applicant alongwith dead co-accused Murad Khan son of Dilawar @ Tiger son of Faraz Khan, Muhammad Arsalan @ Bilal son of Muhammad Iqbal, Farooq @ Choha son of Muhammad Iqbal and Saeed Alam son of Umer Daraz, discharged co-accused, who have not been identified by witness during identification parade, Imtiaz Ahmed Memon son of Mir Muhammad and Arif Anwar son of Haji Dara Shah as well as Fahad, Rafiq and Waris (who have not been arraigned as their parentages and addresses are not known and referred with blue ink) duly armed with pistol entered into Meezan Bank, situated in Baldia Town No.9 near Al-Ghazi Market, Saeedabad, Karachi and after having formed an unlawful assembly and in furtherance of their common object, on show of pistols, firstly hostage the staff of the bank and controlled upon security guards, subsequently looted cash of Rs.27,46,820/-, 3 mobile phone sets and one pistol of 30 Bore alongwith magazine loaded with four live bullets and then decamped from crime scene, for which present case was registered.

Heard the parties' advocates and perused the record.

It is contended by the learned counsel for the applicant that the case against applicant/accused is false and has been registered due to enmity. He further contends that alleged incident took place on 06.11.2015 while the same was reported on 09.11.2015 after the delay of 3 days for which no explanation has been furnished; that the name of the applicant is not appearing in the FIR but this FIR has been registered falsely after due deliberation and consultation to involve the applicant/accused in this case malafidely; that neither any robbed mobile phone set nor any robbed cash etc. was recovered from the possession or pointation of the applicant/accused; that the identification test was held before the Judicial Magistrate after 11 days of arrest of the applicant/accused whereby PW Zubair Ahmed claimed that applicant was amongst the bandits and the police have not got identified the applicant through other PWs including the complainant, therefore the said identification parade having no evidentiary value. During the course of arguments, learned counsel for the applicant has also reiterated the same facts and grounds which he has taken in the bail application however in support of his arguments, he has relied upon in case of Mughal Khan vs. The State reported in 2013 YLR 208, Gul Hassan vs. The State reported in 2011 YLR 1662, Akbar vs. The State reported in 2011 YLR 1795, Ali Akbar vs. The State reported in 2011 P.Cr.L.J. 445 and Mevo Rind vs. The State reported in 2012 YLR 151.

Conversely, learned A.P.G. has opposed this bail application on the ground that this accused is involved in so many cases of like nature, therefore, he is not entitled for bail. He further submits that this accused is directly involved in this case by looting the bank amount alongwith other accused and during identification parade applicant was identified by PW Zubair Ahmed whose name is appearing in the FIR and who is the eye witness of the incident.

The allegation against the applicant/accused is that on the date and time of the incident, this applicant/accused alongwith co-accused entered in the Meezan Bank and he alongwith co-accused by the show of weapons firstly hostage the staff of bank and controlled upon security guards, subsequently looted cash of Rs.27,46,820/-, 3 mobile phone sets and one pistol of 30 Bore alongwith magazine loaded with 4 live bullets. This incident has

been witnessed by one PW Zubair Ahmed, security guard of the bank whose name is appearing in the FIR as a witness who during identification test held before the Magistrate correctly identified the present applicant as one of the accused involved in the commission of the offence. This witness having no inimical term with the present applicant nor it is alleged by the applicant that he had any inimical term with PW Zubair Ahmed, prima facie shows the involvement of the applicant/accused in this case which appears to serious, heinous in nature and so also against the society. This type of activities is increasing day by day in our society which is to be curbed with iron hands.

The version of the complainant has been fully supported by the PWs in their statements recorded under Section 161 Cr.P.C. the robbed property is cash amount which would easily be disposed of immediately. The mere non recovery of the robbed amount is no ground for grant of bail. The applicant has not alleged or proved any enmity or ill-will with the complainant party. There is sufficient material available on record to connect the applicant with the commission of alleged offence.

As far as the delaying in lodging the FIR is concerned, the complainant has given explanation in delay of lodging of FIR. I have gone through the case of Mazhar Iqbal vs. The State & Others reported in 2010 SCMR 1171. In this authority, it has been held as under:-

“No doubt, there is delay in lodging the FIR but the complainant has tried to explain such delay. However, the delay by itself is not sufficient to grant of bail unless the same is supported by other circumstances.”

No proof has been brought on record by the applicant/accused that FIR has been delayed and lodged after due deliberation and consultation to involve the applicant/accused in this case.

As observed above, sufficient evidence/material is available on record to connect the applicant/accused with the commission of non-bailable offence, as such the case of the applicant does not call for further inquiry. Accordingly, instant bail application of the applicant/accused is dismissed having no merit.

So far as the cases referred by the learned counsel for the applicant/accused is concerned, same are not applicable in the present case as the facts and circumstances of the cited cases are different from the facts of the case in hand.

Before parting with the order, I would like to make it clear that any observation in this order is tentative in nature and shall not affect the merit of the case.

This bail application was dismissed by me after hearing the learned counsel for the parties in open Court in the early part of the day and these are the reasons for the same.

JUDGE

Saleem