

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr.Bail Appln. No.428 of 2018

Date	Order with signature of Judge
------	-------------------------------

For hearing of Bail Application

05.06.2018

Mr. Zahoor Ahmed, advocate for the Applicant.
Ms. Rahat Ahsan, D.P.G.

-.-.-.-.-

Through the instant bail application, applicant/accused Imran, son of Raja, seeks bail after arrest in FIR No.590/2017, registered at police station Darakshan, Karachi under Sections 392/34 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 04.11.2014 at about 1245 hours, complainant reached at B-Street,, Crossing Saba Avenue, Phase-V, DHA Karachi meanwhile a person on motorbike No.HG-5745 came there and on gunpoint snatched his mobile Samsung J-5. Suddenly a police mobile came there and then Complainant told them about the incident, they chased the accused and apprehended him. During personal search mobile and 30 bore pistol with live cartages were recovered. The police registered two FIR bearing No.590 and 591 of 2017, one under Section 392 PPC and other under Section 23(i)A of SAA, 2013.

3. The applicant/accused approached the learned XI Additional Sessions Judge, South, Karachi, for post arrest bail in FIR No.590/2017, which was declined by order dated **13.02.2018**. Thereafter, the applicant has approached this Court for grant of post arrest bail.

4. Learned counsel for the applicant contended that the offence does not fall within the prohibitory clause and minimum punishment is three years and maximum punishment is seven years. The accused has already been granted bail in the offence under Section 23-A(i) of Sindh Arms Act, 2013 which carries even longer period of punishment.

Learned counsel states that applicant is innocent, no offence as alleged or otherwise has been committed by him, he has been involved in this false case in collusion with the police for ulterior motive. Nothing was recovered from the present accused. None of private person was associated as witness nor anyone of them was made as mashir of recovery/arrest. Learned counsel contended that all the witnesses of recovery of incriminating articles are police officials though applicant / accused is alleged to have been arrested from a busy area hence as observed in the reported case of Kamran @ Ghulam Hussain @ Kallo ..Vs.. The State **PLD 1997 Karachi 484**, case of applicant / accused required further inquiry as envisaged under Section 497(2) of Cr.P.C. He lastly argued that applicant is in custody for over 7 months but not a single witness has been examined by the prosecution and the delay has not been attributed to the applicant, as such, concession of bail may be granted to the applicant.

5. Learned Additional Prosecutor General Sindh argued that since the applicant has committed an offence as such he is not entitled to concession of bail. She opposed the bail application.

6. After hearing the learned counsel for the parties and going through the record, it has been noticed that applicant/accused was arrested by the police from a busy area in broad day light but the prosecution has miserably failed to associate private witness or mashir of arrest/recovery, which creates doubt in the prosecution story. At the bail stage, tentative assessment of material collected during investigation is to be made. Benefit of doubt even for limited purpose of bail is to be extended to the applicant/accused. Applicant/accused is no more required for investigation purpose. Applicant/accused is in jail yet charge has not been framed. In the circumstances of case since the offence does not fall

under prohibitory clause and he is already granted bail in the connected case under FIR No.591/2017 I am inclined to grant his bail.

7. For the above stated reasons, and the case law cited at the bar the applicant *prima facie*, has made out a case for concession of bail, therefore, this application is allowed, the applicant/accused Imran son of Raja, subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (*Rupees One Hundred Thousand*) and P.R bond in the like amount to the satisfaction of trial Court.

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

JUDGE

SM

