

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD**

Crl. Bail Application No. S – 33 of 2018

Abdul Hakeem son of
Munir Ahmad. Applicant

Versus

The State. Respondent

Applicant Through Mr. Ghulam Sajjad Gopang,
Advocate.

Respondent Through Mr. Shahzado Saleem Nahiyoon
DPG

Date of hearing 01.06.2018
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ORDER

Shamsuddin Abbasi, J:- Applicant/accused Abdul Hakeem seeks post arrest bail in Crime No.250 of 2017 registered with Police Station A-Section, Shaheed Benazir Abad for offences punishable under Sections 395 & 450, PPC.

2. The facts relevant to this bail application are that on 16.08.2017 complainant Jhaman Mal, resident of A-23, Housing Society, Nawabshah, lodged FIR at Police Station A-Section (SBA), stating therein that on 15.08.2017 he was present in his house. At that time some guests were also present in the house. It was about 3.00 pm when six persons entered into his bungalow from the side back door, duly armed with weapons, and by show of force robbed Rs.90,000, golden chain and mobile phones from complainant and witnesses and fled away alongwith the robbed articles. According to

complainant amongst six culprits he recognized two as Muhammad Imran and Abdul Hakeem (present applicant).

3. After registration of case, the police arrested the applicant/accused on 10.09.2017 alongwith crime weapon and separate case under Section 23(1)(a) of Sindh Arms Act, 2013 was also registered against him and after usual investigation challan was submitted before the Court of competent jurisdiction.

4. Learned counsel for applicant/accused contended that applicant/accused has been implicated in this case due to enmity with DSP Muneer Ahmed Parhiyar and complainant has implicated him at the behest of said DSP. He contended that there is delay of about 24 hours in lodging of FIR without furnishing plausible explanation. He further contended that the case is of robbery of Rs.40,000/-, one golden chain and one mobile phone but police has failed to recover any incriminating article from the possession of applicant/accused. He further contended that alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C. and in such cases grant of bail is a rule and refusal thereof is an exception as held by Hon'ble Supreme Court of Pakistan. He further contended that applicant/accused by profession is a generator mechanic and he has no criminal record. In support of his submissions, learned counsel for applicant/accused has placed reliance on 2011 P.Cr.L.J. Lahore 1567, 2004 P.Cr.L.J. Karachi 668 and 2011SCMR 1644.

5. On the other hand, learned counsel for complainant contended that the complainant belongs to minority and no malafide has been shown by the applicant/accused against complainant for his false implication in this case. He further contended that delay in lodging of FIR has been well explained by the complainant. He

further contended that in fact it is a case of robbery of Rs.90,000/-, mobile phones and golden chain from complainant and witnesses, the incident has taken place inside the house of complainant and complainant and PWs are the natural witnesses of the incident. He further contended that PWs have fully supported the case of complainant in their respective statements under Section 161, Cr.P.C. It is also contended that the incident had taken place in day time and question of wrong identity does not arise. The applicant/accused was a generator mechanic and he used to come to the house of complainant for repairing of generator, he is master mind of this incident and played main role in the commission of crime and police has recovered crime weapon from his possession. He further contended that complainant party belongs to minority and due to this incident complainant has shifted to Karachi alongwith his family due to fear and insecurity and complainant used to come on each and every date of hearing and pursuing his case and charge has been framed but not a single witness has been examined due to adjournments sought by the applicant's side.

6. Learned DPG for the State has adopted the same submissions as raised by the learned counsel for complainant with the addition that prosecution has collected sufficient material to connect the applicant/accused with the commission of crime and police has also recovered crime weapon and narcotics from the possession of applicant/accused and separate cases for recovery of crime weapon and charas have been registered against him at the same police station. He further contended that two accomplices of the applicant have been killed in police encounter and police has

busted this gang of dangerous and desperate criminals and has opposed the grant of bail.

7. Heard learned counsel for applicant/accused, advocate for complainant and DPG for the State as well as perused the entire material available on record.

8. Admittedly applicant/accused is nominated in FIR with specific role that he was armed with pistol and robbed cash of Rs.40,000/- and a mobile phone from complainant. Crime weapon has been recovered from his possession. PWs in their respective statements under Section 161, Cr.P.C. have fully corroborated the version of complainant. During pendency of this bail application, report as to the present status of the case was called from trial Court, which was received on 01.06.2018, reflects that charge was framed on 06.01.2018 and case was adjourned to 20.01.2018 for recording of evidence of PWs, but report reveals that on various dates viz 20.01.2018, 03.02.2018, 10.03.2018, 31.03.2018, 03.05.2018 and 26.05.2018 complainant and witnesses remained present in Court for recording their evidence but the learned defence counsel filed adjournment applications and sought adjournments on one ground or the other and matter was being adjourned from time to time at the request of learned defence counsel. Learned counsel for applicant/accused, during arguments, failed to satisfy this Court with regard to delay in trial. Apparently, applicant/accused and his counsel did not perform their responsibilities and failed to proceed with the matter for one reason or the other and delay in trial is clearly on part of accused side. At this juncture, this Court cannot ignore the attitude of applicant and his counsel causing delay in trial, which create hurdles for complainant party. Here it has been pointed

out by the learned counsel for complainant that complainant belongs to minority and after this incident complainant party shifted from Nawabshah to Karachi due to fear and insecurity and inspite of this fact they used to go to Nawabshah from Karachi to attend the trial on each and every dates of hearing.

9. Prima facie, applicant/accused has not been able to show any malice or animosity on the part of the complainant for his false implication as alleged. The case laws, relied upon by the learned counsel for applicant/accused, have no relevance in the facts and circumstances of the present case. The trial Court has rightly rejected the bail plea of applicant and this Court also found no substance to grant concession of bail in his favour. The matter is ripe of evidence, therefore, the trial Court is directed to conclude the trial and dispose of the matter positively within a period of three months from the date of receipt of this order.

10. Vide short order dated 01.06.2018 this bail application was rejected and these are the reasons thereof.

JUDGE

Naeem