

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.

Cr. Bail Application No.S-377 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<p><u>05.10.2017.</u></p>	<p>For hearing.</p> <p>Mr. Ghulam Sarwar Baloch, Advocate alongwith applicants. Mr. Shahzado Saleem Nahiyoon, D.P.G for the State. None present for the complainant.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Applicants/accused are present on interim pre-arrest bail granted to them by this Court vide order dated 17.05.2017. Today this bail application is fixed for confirmation or otherwise.</p> <p>2. Brief facts of the prosecution case are that on 21.4.2017 at 2030 hours, complainant Yousuf Ali Khan appeared at P.S B-Section Latifiabad Hyderabad and lodged F.I.R. alleging therein that Razzak and Saddam Thari are servants at their house. On 04.3.2017 at about 1100 hours, they left the house for village Khairpur Mirs leaving behind the servant at the house. On 06.3.2017 at about 4.00 p.m. in the evening time, came back to Hyderabad and after opening the locks of rooms when entered inside and saw that the back side window of the house was broken and also locks of the two boxes were broken while the articles and cloths were scattered and when they checked the gold ornaments and money etc then Rs.50,000/- and gold ornaments viz. two gold set of five tola, two gold bangles of four tola, two ladies Jhumka of three tola, and other stitched and unstitched cloths worth Rs.150,000/- missing, as complainant enquired about the servants Saddam and Razzak, but they remained disappeared. Later, the servants Saddam and Razzak were called in the house and were enquired regarding the theft, but they kept complainant party on false hope and finally on 21.4.2017 the above named accused clearly refused to return the theft articles and issued threats. Hence, the complainant appeared at PS and lodged F.I.R. against the accused persons.</p>

3. It is stated by learned counsel for the applicants that applicants/accused are innocent and has been falsely implicated in this case due to ulterior motives. He further submits that F.I.R. is delayed for about 48 days, for which, no plausible explanation has been furnished and no independent witness has been cited in the case, besides according to him, no cogent material/evidence available with the prosecution to connect the applicants/accused with the commission of offence and all sections mentioned in the F.I.R. do not fall within prohibitory clause of section 497, Cr.P.C. He further submits that no specific role has been played by the applicants/accused and co-accused Hyder Ali has already been granted bail in this case by Civil Judge & Judicial Magistrate-I, Hyderabad, therefore, he prayed for confirmation of bail on the rule of consistency.

4. Learned D.P.G. for the State though opposed this bail application, but in view of the rule of consistency, he has conceded to the confirmation of interim bail to the applicants/accused.

5. Arguments heard and record perused meticulously so made available before me.

6. It appears from the record that alleged incident has taken place on 04.3.2017, whereas, the F.I.R. has been registered on 21.4.2017 by the complainant Yousuf Ali after the delay of about 48 days, for which, no satisfactory explanation has been furnished, therefore, on this ground alone false implication of the present applicants/accused in this case cannot be ruled out and this aspect of the case will be determined by the trial Court at the time of trial. It also appears from the record that though names of the applicants/accused are mentioned in the F.I.R, but nothing on record that anybody had seen them while committing the theft from the house of complainant, which fact is also required to be proved at the time of trial. Perusal of impugned order of trial Court showing that bail application of the applicant/accused has been rejected merely on the statement of complainant at the time of arguments of bail application that these are his culprits. The manner in which the bail application has been dismissed is not appreciable. It is an admitted fact that case of the applicants/accused has been challaned and is no more required for further investigation. Co-accused Hyder Ali,

whose case is almost on similar allegation has been granted bail by the learned Civil Judge & Judicial Magistrate-I, Hyderabad, but the said order has not been challenged by the prosecution before any competent Court of law. Nothing was recovered from the present applicants/accused. It has been pointed out by learned D.P.G. that trial has been commenced. The applicants/accused are regularly attending the trial Court. The offences with which the applicants have been booked though non-bailable, but their punishments are not more than seven years, thus, it appears that case of the applicants do not fall within prohibitory clause of section 497, Cr.P.C, therefore, in the circumstances grant of bail is a rule and refusal is an exception as held by superior Courts in many cases and no exceptional circumstance has been pointed out in this case by learned D.P.G to withhold the bail of the applicants.

7. What has been discussed above, I have come to this conclusion that applicants/accused have made out a case for confirmation of interim pre-arrest bail. I, accordingly, confirm the interim pre-arrest bail already granted to the applicants vide order dated 17.05.2017 on the same terms and conditions with direction to the applicants to appear before the trial Court and face the trial. It has been pointed out that in this matter complainant has already been examined by the trial Court, therefore, trial Court is directed to proceed with the case expeditiously and decide the same preferably within a period of three months after receipt of this order. No unnecessarily adjournments shall be granted to either side and compliance report be submitted to this Court through Additional Registrar.

8. Needless to mention here that observations made herein above, if any, are tentative in nature and shall not affect the merits of the case.

The bail application stands disposed of in the above terms.

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JUDGE.