

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

Cr. Bail Application No.S-665 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
<p><u>02.10.2017.</u></p>	<p>For hearing.</p> <p>Applicant is present in person, but his Advocate is called absent. Mr. Irum Ahmed D.D.P.P. for the State. None present for the complainant.</p> <p style="text-align: center;">===</p> <p><u><i>ABDUL MAALIK GADDI,J-</i></u> Applicant/accused is present on interim pre-arrest bail granted to him by this Court vide order dated 23.8.2016. Today this bail application is fixed for confirmation or otherwise.</p> <p>2. Brief facts of the prosecution case are that on 10.6.2016 complainant left his house for Karachi after locking and when he returned back he saw the locks of the doors and windows were broken open, locks of almirah was also broken and from his house valuable items were removed.</p> <p>3. It is stated by the applicant that case against him is false and has been registered due to enmity, besides according to him, his name has been mentioned by the complainant in the F.I.R. on the basis of surmises and conjuncture and F.I.R. is delayed by four days, for which, no explanation has been furnished. He also submits that all the sections applied in the F.I.R. though not bailable, but their punishment do not fall within prohibitory clause of section 497, Cr.P.C. According to him, he is appearing before the trial Court regularly without any substantial progress has been made out.</p> <p>4. Learned D.P.G. for the State has opposed this bail application on the ground that name of applicant is appearing in the F.I.R with specific allegation that present applicant has committed theft from the house of the complainant. He further submits that pre-arrest bail is an extra ordinary remedy which could be extended only when malafide on the part of the complainant is apparent but the applicant has not argued any single reason for implicating the applicant in the F.I.R. In absence of malafide on the part</p>

of the complainant and the police, the extra ordinary remedy in shape of pre-arrest bail could not be extended which is a decisive factor.

5. I have given my anxious thoughts to the contention raised at the bar and have gone through the police papers so made available before me.

6. It is an admitted fact that as per F.I.R, the incident took place on 10.11.6.2016, but F.I.R. was registered on 15.6.2016 after delay of about four days, for which, no satisfactory explanation has been furnished. No doubt, the name of the applicant/accused is appearing in the F.I.R, but nobody had seen him while committing theft from the house of the complainant. Sections applied in the F.I.R or their punishment of the offence does not fall within prohibitory clause of section 497, Cr.P.C, therefore, on this ground alone bail could not be refused as held by the superior Courts unless exceptional circumstances appears. No exceptional circumstance is appearing in the case to withhold the bail of the present applicant. It is an admitted fact that challan has already been submitted before the Court competent Court of law and applicant is no more required for further investigation. Applicant is appearing before the trial Court regularly without any substantial progress in the case. There is nothing on record that applicant is previous convict or arrested in a case of similar nature in past.

7. In these circumstances, I have come to this conclusion that applicant/accused has made out a case for confirmation of interim pre-arrest bail. I, accordingly, confirm the interim pre-arrest bail already granted to the applicant vide order dated 23.08.2016 on the same terms and conditions with direction to the applicants to appear before the trial Court and face the trial.

8. Needless to mention here that observation made herein above, if any, is 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.