

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 711 of 2018

Date	Order with Signature of the Judge
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For hearing of bail application.

Heard on	:	26.07.2018
Date of order:	:	26.07.2018.
For Applicant	:	Mr. Arshad H. Lodhi, Advocate.
For State	:	Mr. Sagheer Abbasi, A.P.G.

Kausar Sultana Hussain, J.:- This bail application is filed on behalf of applicant/accused Hashmat Ali son of Mehboob Ali involved in case FIR No. 474 of 2016 dated 24.07.2016, police Station Darakhshan, District Karachi South for an offence under Section 395 PPC. The applicant/accused preferred first bail application before the Court of learned Sessions Judge, Karachi South, which was dismissed vide order dated 10.09.2016. Subsequently, applicant/accused filed bail application before this Court, which was also dismissed by order dated 07.04.2017 being not pressed, with directions to trial Court to conclude the trial within a period preferably three months from the date of receipt of order. Later on applicant/accused filed another bail application before the trial Court, which was also declined on 26.08.2017 by the Court of learned Xth Additional Sessions Judge, Karachi South. Applicant/accused again approached to this Court for grant of bail which was too dismissed by order dated 08.12.2017. Finally applicant/accused preferred another bail application before the Court of XIIth Additional Sessions Judge, Karachi South, which was dismissed by the said Court vide order dated 28.04.2018. Hence present bail application.

2. Succinct contents of FIR discloses that on 24.07.2016 at about 08.30 hours, when complainant was out of city with his family while leaving his father and mother at home, his servant Rashid Pathan, who was living in the Bungalow alongwith other servants, barged into the house alongwith eight accomplices and

robbed gold Jewelry, laptop, I-pad, mobile phones, ATM Cards and some other valuables, hence this FIR.

3. Case of prosecution is that applicant/accused Hashmat alongwith another co-accused was arrested on 02.08.2016 and two cellular phones and one un-licensed pistol were recovered from the possession of applicant/accused at the time of his arrest. Applicant/accused was put to identification parade and during such proceedings prosecution witness identified the present applicant/accused and so also co-accused.

4. Learned counsel for the applicant/accused contended that he is innocent and falsely been implicated just to show the efficiency and progress in the case. He contended that accused was arrested on 02.08.2016 and since then he is in custody continuously yet prosecution failed to bring any evidence against him on record. He further contended that the delay in trial cannot be attributed to the applicant/accused. During the course of arguments he laid emphasize that fair and expeditious trial is a fundamental right of the applicant/accused and he cannot be devoid such right, thus he cannot be put indefinitely in Prison when the delay is not on his part. During the arguments, he also questioned the authenticity of the identification parade. He stated that alleged identification period was held after eight days of police custody remand of the applicant/accused and during such police custody remand, applicant/accused was shown many times to alleged eye-witnesses at the police station and such objection was also agitated by them during identification parade.

5. Learned A.P.G appearing for the State opposed the bail with vehement contending that the applicant/accused has rightly been identified in identification parade and that the offence with which applicant/accused is charged falls within the prohibitory clause of section 497 Cr.P.C.

6. I have given my anxious consideration to the contents of learned counsels, and also gone through the record in the file of the case. Admittedly up till now the only evidence available against the applicant/accused is his recognition during identification parade held prior to commencement of trial. The prosecution yet not put forth any evidence against the applicant/accused during the proceedings of trial, although almost two years elapsed from the day of arrest of the applicant/accused. This court given directions to trial court on 27.04.2017 to conclude trial preferably within three months, yet fifteen months passed and only one prosecution witness was examined, who did not alleged anything against the applicant/accused. Record showed that the father and mother of the complainant who could have been star witnesses of the case were not been cited as witnesses at all.

7. It is clear that in the past two years, only one witness was examined by the prosecution and culmination trial is not foreseeable in near future. Applicant/accused is in jail on account of indolence on the part of prosecution right of accused for a fair, speedy and expeditious trial cannot be violated in circumstances. Accordingly bail is allowed to applicant/accused against surety amount of Rs. 100,000/- with P.R. Bond in the like amount.

8. Above are the reasons for short order dated 26.07.2018.

JUDGE

Faheem/PA