

IN THE HIGH COURT OF SINDH, KARACHI

CrI. Bail Application No.106 of 2018.

Date of hearing: 20.02.2018.

Applicant: Shahzad, through Mr. Mohammad Saleh Kolachi, Advocate.

Respondent: The State, through Mr. Deewan Bhuromal, D.D.P.P.

Complainant: Ibrahim Shah, through Mr. Iftikhar A. Gohar, Advocate.

ORDER

MRS. KAUSAR SULTANA HUSSAIN, J:- Applicant is booked in Crime No.379/2017, under Section 392/395/34 P.P.C., P.S Shah Latif Town, Karachi. Applicant applied for bail before learned Vth-Additional Sessions Judge, Malir Karachi, who dismissed the same per order dated 14.10.2017. Against the aforesaid order present bail application has been filed.

2. Precisely, the facts of the prosecution case are that the complainant lodged an F.I.R. on 18.07.2017 at 1800 hours, stating therein that he does Transport Work. Today 18.07.2017, when he was present at his Dera Company Abdul Dhani Parto Goth, Malir Karachi alongwith other peoples, Jamal, Mubashir Ali, Ajmal, at about 2.30 pm, four persons on the force of weapons forcibly entered from main gate, they detained them inside the room and they took one 9-MM pistol No. TGN-17122, License No. 110017176, mobile phone Samsung, ATM card, CNIC and cash of Rs. 2,50,000/- from his Almirah and two mobile phones from Jameel, one Q mobile phone from Mubashir Ali and one mobile phone LT 700 from Ajmal Shah snatched and extended threats to keep silence, police was informed about this incident, now he has come for report, his claim is against four unknown identifiable culprits.

3. Mr. Mohammad Saleh Kolachi, learned counsel for the applicant, in support of bail application, has submitted that the name of the applicant/accused is not being shown in FIR. He further submitted that the prosecution story is concocted and false on the face of FIR. He further submitted that the

Section 395 PPC does not attract in this case as in the FIR three accused have been nominated whereas, in challan more than five persons have been shown in order to convert the alleged offence from 392 to 395 PPC. Learned counsel for the applicant has further submitted that the applicant/accused was arrested on 10.08.2017 when he was already in police custody in another crime, whereas the identification parade held on 15.8.2017, after passing five days of his arrest. He further submitted that the applicant is not a previously convicted offender for an offence punishable with death or imprisonment for life. He also submitted that applicant is not a desperate or dangerous criminal or is accused of an act of terrorism punishable with death or imprisonment for life. He further submitted that the applicant/accused and complainant party are residing in katchi abadi, in most of katchi abadi brawls are taken place for possession of lands/plots etc, the applicant/accused is one of the victim of the same matter and the benefit of doubt should go to applicant/accused, hence case requires further inquiry. He prayed for grant of bail in favour of applicant/accused Shahzad.

4. Learned D.D.P.P has vehemently opposed the bail application, on the ground that after arrest of applicant/accused in another crime, he confessed his guilt of this crime and on his pointation robbed cash amount alongwith ATM card and CNIC of complainant Ibrahim were recovered. The applicant/accused was also identified by the eye witnesses during identification parade conducted before Judicial Magistrate. Per learned D.D.P.P, case of the applicant/accused falls within prohibitory clause of section 497 Cr.PC.

5. Similarly learned counsel for the complainant also opposed the bail vehemently on the ground that the applicant/accused is a habitual criminal. He adopted the arguments of learned D.D.P.P and prayed for dismissal of his bail application.

6. Heard and perused the record available on the file, while going through the contents of FIR, it reveals that FIR was lodged by the complainant against four unknown persons and later on, during investigation through statements of the P.Ws

under Section 161 Cr.PC, who were present outside the Dera of the complainant, it came on record that two more persons were also present outside the Dera including present applicant/accused during the course of robbery. After the arrest of the applicant/accused, identification test was also conducted by the concerned Magistrate through the complainant and other star witnesses of this alleged incident, who identified the applicant/accused as same accused. The applicant/accused is also involved in other crimes of same nature. The learned counsel for the applicant/accused took plea of old enmity between the elders of the applicant/accused and complainant regarding property but no such documents or evidence have been brought on record by the complainant, which could show the alleged enmity between them. No P.W has yet been examined by the prosecution before the learned trial Court, therefore at this stage I am of the view that sufficient evidence is available against the applicant/accused, which prima facie connect the applicant/accused with the present crime. I relied upon the case law cited in 2002 SCMR 442, wherein it has been held by the Hon'ble Supreme Court that "none can claim bail as of right in someailable offences even though the same do not fall within the prohibitory clause of section 497 Cr.PC". I, therefore, dismiss the bail application of the applicant/accused. Order passed accordingly.

7. Any observation made in the above order is of tentative in nature and shall not effect the case of the prosecution at the trial. Learned trial Court shall dispose off the case strictly in accordance with law and the material brought before it.

JUDGE

Karachi
Dated 19.03.2018

Faheem/PA