

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.169 of 2020

Present:

Mr. Justice Abdul Mobeen Lakho

Applicant: Abdul Ghani S/o Wasayo,
Through Mr. Ali Bux Bhagaat, Advocate.

Respondent: The State, through Mr. Abdullah Rajput,
APG.

Dates of hearing: 02.03.2020

Date of order: 02.03.2020

ORDER

ABDUL MOBEEN LAKHO, J:- Having rejected his earlier bail after arrest application bearing No. 278/2020 by the learned VIIIITH Additional Sessions Judge Karachi East vide order dated 01.02.2020, the applicant/ accused Abdul Ghani S/o Wasayo seeks post-arrest bail in Crime No. 384 of 2019, registered at PS Landhi, under Section 394/34 P.P.C through the instant bail application.

2. Brief facts, as per FIR, are that complainant Saeed Mian son of Noor Alam, resident of House No.315, Ilyas Goth, Chashma Goth, Landhi No.4, Karachi that on 6.9.2019 from Darya Khan Showroom he purchased one vehicle make Cultus bearing No.BQD-648, from Show Room Darya Khan Motors, Ghaghar Phatak, Main National Highway, near Seesi Tool Plaza, Karachi, against sale consideration of Rs.16,95,000/- (sixteen lac and ninety five thousand) at spot he paid an amount of Rs.5,00,000/- through cash and issued Cheque for Rs.5,00,000/- for remaining amount requested for time till 27.9.2019, when documents shall

also be delivered, he made phone call to Darya Khan, that the way is not good, you may come at Karachi Dar-ul-Uloom and receive remaining amount, Darya Khan asked to bring the cash at gate of DC Office Quaidabad, his boys will come and bring him at showroom, he alongwith his son Saeed Anwar, his friend Noman and his brother in law Muhammad in his newly purchased vehicle left house with cash while he was driving his vehicle, he received phone call of Darya Khan who asked that where is he bringing the cash, he told him that he just crossed Babar Market Landhi, after few minutes reached at Timber Market, Area 89, Landhi Main Road, Karachi then two motorcycles 125 with two/two riders came after his vehicle, the persons on motorcycle in front took out pistol and threatened to stop the vehicle, he tried to pass through main side, then they came at driving side and fired on him, which hit on his left side shoulder, the vehicle went out of control, hit footpath and was stopped, from both motorcycle the culprits holding pistols in their hands came, opened the door of his vehicle, snatched cash Rs.5,00,000/- and ATM card of Meezan Bank, from his son Saeed Anwar snatched cash Rs.3,00,000/-, featured mobile phone with SIM No.0316-2094175, made aerial firing and fled away, he then through ambulance in injured condition alongwith his son and brother in law went to Jinnah Hospital for medical treatment, at Jinnah Hospital the police personals of Landhi came, but he was not in position of recording his statement, thereafter for medical treatment from Jinnah Hospital he went to Sir Syed Hospital Qayyumbad, now he is much better and came to lodge report, his claim is against 04 unknown armed identifiable dacoits, who snatched cash Rs.5,00,000/- important document, ATM card of

Meezan Ban, fired on him and caused injury, from his son Saeed Anwar snatched Rs.3,00,000/- and after making aerial firing fled away on their motorcycle. Hence, this FIR.

3. Learned counsel for applicant in support of present bail application has submitted that from bare reading of FIR it is very much evident that the FIR was lodged against unknown accused persons, while no description/huliya of applicant/accused has been mentioned by the complainant. He further argued that it is a matter of record that the instant FIR was lodged after delay of 11 days, in respect of such delay the complainant remained miserably fail to produce any plausible explanation, which creates doubts in the veracity of prosecution story, hence the case is fit for further enquiry under Section 497(ii) Cr.P.C. He further argued that the applicant/accused was arrested on 21.10.2019 in crime bearing No.490/2019, thereafter the applicant/accused was implicated in this case on the basis of extra judicial confession made before investigating officer, while the identification parade was held on 24.10.2019, which is sufficient to make the very implication of applicant/accused highly doubtful, hence the case in hand is fit for further inquiry under Section 497(ii) Cr.P.C. and the applicant/accused is entitled for concession of bail. He further argued that no incriminating article was recovered from the possession of applicant/accused nor any thing has been recovered by the prosecution on pointation of applicant/accused. He further argued that as per contents of FIR no private/independent witness has been cited by the prosecution, which is gross violation of mandatory provisions of section 103 Cr.P.C. He further argued that the applicant/accused and the complainant are well known to

each other as they are residing in the same vicinity, which is very much evident from the address provided by the complainant in FIR and the address of the applicant/accused mentioned in his CNIC. While the instant FIR was lodged against unknown accused person. On this score alone the case in hand is fit for further enquiry under section 497(2) Cr.P.C. and the applicant/accused is entitled for concession of bail. He further argued that all the witness of prosecution are police officials, no any independent person of the locality has been cited as witness in charge sheet, which makes this case fit for further enquiry under Section 497(ii) Cr.P.C. He further argued that from bare reading of FIR it is very much clear that no any incriminating article or weapon was recovered from the exclusive possession of the applicant/accused. The alleged offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. It is settled principle of law and held in 1995 PLD S.C. that in such like case where alleged offence does not fall within the prohibitory clause the bail is rule and refusal is an exception. He further submitted case of the prosecution is doubtful and applicant is entitled to bail, as this case requires further enquiry.

4. Conversely learned D.P.G has vehemently opposed the grant of bail and has supported the order passed by the learned Trial court. Learned D.P.G has argued that association of private witnesses was not called for.

5. I have given due consideration to the contentions of learned counsel for the applicant/accused, learned DPG and also perused material available on record.

6. The incident took place when his son and brother in law both were sitting with him at the time of incident the complainant was shifted to Jinnah Hospital where a police personnel came from Landhi Jail but the complainant was not in the position to record his statement. The surprising fact is that the complainant was not alone and was accompanied with two of his companions, his son who lost Rs.3,00,000/- and his friend and his brother in law, none of them went to the police station to inform the police about the incident and complainant waited for 11 days to lodge the FIR. The appellant has not been named in the FIR nor any thing incriminating has been recovered from the present accused. One more aspect of the case is that if the parties had known each other from before then why no one was nominated in the FIR.

7. In view of the foregoing, learned counsel for the applicant has made out a case of further enquiry within the meaning of subsection 2 of section 497. Therefore, applicant/accused is admitted to bail in the sum of Rs.500,000/- and P.R. Bond in the like amount to the satisfaction of Nazir of this Court.

8. These are the reasons of my short order dated 02.03.2020.

This Criminal Bail Application stands disposed of in the same terms.