

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

Criminal Bail Application No. 1396 of 2020
Criminal Bail Application No. 1287 of 2020
Criminal Bail Application No. 1414 of 2020

Date _____ Order with Signature of the Judge _____

For hearing of bail application.

15th October, 2020.

Mr. Khawaja Muhammad Azeem, Advocate for the applicant in Cr.B.A. No. 1396 of 2020.

Mr. Muhammad Asif Malik, Advocate for the applicant in Cr.B.A. No. 1287 of 2020.

Mr. Irshad Ali Bhatti, Advocate for the applicant in Cr.B.A. No. 1414 of 2020

Mr. Umar Farooq, Advocate for the complainant alongwith complainant.

Ms. Rahat Ahsan, Addl. P.G.

Heard on : 15.10.2020

Decided on : 15.10.2020

Kausar Sultana Hussain, J.:- On dismissal of post-arrest bail Application No.2510 of 2020 of applicants / accused Muhammad Asim and Aamir Rasool and another Bail Application No. 2676 of 2020 of applicant / accused Saqib Razzaque, by the learned trial Court, vide orders dated 17.8.2020, the above named applicants / accused have approached this Court, by filing instant bail applications under Section 497 Cr.P.C to enlarge them on bail in case FIR No.13 of 2020, under Sections 380, 420, 468, 471, 411/34 PPC, registered at P.S. K.P.T. (West), Karachi.

2. Briefly stated the relevant facts are that complainant Simsam Ali Shah, Traffic Supervisor, Traffic Department K.P.T, Karachi, with reference letter detailed: Karachi Port Trust (Traffic Department No.TR(TOCC)/261/2020/1532, dated 21.05.2020 to SHO KPT Police

Station, subject police report through form "B" regarding missing of 12 coils out of 49 manifested under index No.74 Ex. -M.V. Beijing Venture @ 21.04.2020 from berth No.15, East Wharf reference Traffic Supervisor plinth Incharge 14-17, East Wharf detailed police report through form "B" vide No.T/DE/Theft/2020/213 dated 14.05.2020. 1. Reference above and in continuation of lodging from "B" by Traffic Supervisor Plinth Incharge 14-17 East Wharf to KPT police station dated 14.05.2020, has lodged instant FIR on 21.05.2020 at 1330 hours, after detailed enquiry as above mentioned, where the complainant party has nominated two accused persons each namely Saqib Razzak (Rana) son of Abdul Razzak cell No.0307-7632531, CNIC No.31303-4983404-3, resident of Lyari and Saeed Zaib son of Alam Zaib, cell No.0347-3339955, CNIC No.42301-9659524, resident of Bheampura, Karachi and other unknown persons for missing / theft of 12 coils out of 49 coils of index No.47 of Berth No.15, East Wharf, KPT, Karachi, hence instant FIR was lodged for offence under Section 380/34 PPC.

3. I have heard the learned counsel for the applicants / accused and learned Addl. P.G duly assisted by the learned counsel for the complainant and have perused the material available on record.

4. The learned counsel for the applicants / accused Aamir Rasool and Muhammad Asim have argued that the applicants / accused are innocent and have falsely been involved in this case. Per learned counsel there is a delay of 11 days in lodging FIR without any plausible explanation; that no recovery of stolen coils have been effected from the possession of applicants/accused; that the applicants/accused are Government servants and their involvement in this case merely based on account of committing negligene in official duty and negligence in officials duty may not be termed as criminal offence; that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C., as such case is doubtful and requires further inquiry. They prayed for

grant of bail. In support of their arguments, they have relied upon the case law reported in 2020 SCMR 1258, 2020 SCMR 717, 2004 PCr.L.J 1246 (Karachi), 2006 SCMR 66, 1999 P.Cr.L.J 1555 (Lahore), 2005 YLR 184 (Karachi), 2006 YLR 2977 (Lahore), 2007 YLR 1145 (Lahore), 2017 P Cr.L.J 219 (Sindh, Sukkur Bench) and PLD 2017 Supreme Court 733.

5. Learned counsel for the applicant / accused Saqib Razaque has argued that the applicant/accused is innocent; that there is no eye witness of the alleged incident and the complainant just on the basis of doubt as well as previous enmity has falsely implicated the present applicant/accused; there is no direct or indirect evidence available on record against the applicant/accused; that there is a delay of 10 days in lodging of FIR without any plausible explanation; that challan has been submitted and the applicant/accused is no more required for further investigation; that as per mashirnama no recovery has been effected either from place of incident or from applicant/accused; that the offence according to FIR is general in nature and no specific role has been assigned to the applicant/accused; that prior to the incident an FIR No. 237 of 2020, under Section 468, 471, 420 PPC of PS Jackson, Karachi was also lodged against the applicant/accused with the collusion of the complainant and after fair investigation the said crime was approved as "C" Class and the concerned Court pleased to accept the said report and passed order dated 19.7.2020, hence the matter requires further inquiry and bail may be granted to him. In support of his arguments, he relied upon the case law reported in 2019 SCMR 1152, 2020 SCMR 434, 2018 YLR 1411 (Lahore) and PLD 1995 Supreme Court 34.

6. Conversely, the learned Addl. P.G with the assistance of learned counsel for the complainant has opposed the plea of the applicants/accused and emphasized on the point that the FIR was lodged just after completion of inquiry and detailed report on FORM-B as required under Rule 197, Chapter 29 of the Karachi Port Manual for the

Traffic Department, therefore, said delay has been duly covered in compliance of requirement of said Manual; that on the day of incident the applicants/accused Aamir Rasool and Muhammad Asim were on duty from Plinth No.14 to 17 and theft of 12 coils were committed from Plinth No.15, area under the duty / supervision of the above named applicants / accused. She also vehemently opposed for grant of bail to the applicant / accused Saqib Razzaque, on the ground that the above named applicant/accused moved Bail Before Arrest Application under Section 498 Cr.P.C before the learned trial Court, vide BBA No. 1771 of 2020, which was re-called, vide order dated 15.6.2020 and second bail application under Section 497 Cr.P.C, was moved before the learned trial Court, which also dismissed, vide order dated 27.6.2020, thereafter he moved another bail application before IInd Additional Sessions Judge, Karachi West, which too dismissed, vide order dated 17.8.2020 and then he impugned the same before this Court for grant him on bail; that the applicant / accused is nominated in the FIR with specific role; that the prosecution witnesses have fully implicated the applicant/accused in their statements under Section 161 Cr.P.C, as he prepared forged exit documents of trawler No. TMG-762 and committed theft of 12 of coils alongwith co-accused persons from KPT premises, therefore, she prayed for dismissal of bail applications of the above named three applicants / accused. In support of arguments she relied upon the case law reported in 2008 SCMR 815 and PLD 1994 Karachi, 462.

7. After hearing arguments of both the side and perusal of record, I am of the view that FIR has been lodged after conducting inquiry and detailed report on Form-B as required under Rule 197, Chapter-29 of the Karachi Port Manual for the Traffic Department and said delay has been duly covered in compliance of requirement of said Manual, therefore, it is not a sufficient reason to ignore the other evidence of the case. The facts of the FIR as well as statements of prosecution witnesses recorded upon

161 Cr.P.C clearly shows the role of the applicants/accused Aamir Rasool and Muhammad Asim whereby they intentionally facilitated the applicant/accused Saqib Razzque and co-accused while committing the alleged offence. Record shows the sufficient material available against all three applicants/accused, therefore, in my view there is reasonable ground to believe the involvement of the applicants/accused and no case of further inquiry under Section 497 (2) Cr.P.C is made out.

8. Upshot of above discussion is that on merits the applicants/accused are not entitled for concession of bail at this initial stage of the case. The instant bail application of the applicants/accused is hereby dismissed having no merits.

9. Case laws cited by the learned counsel for the applicants/accused in my opinion are distinguishable from the facts and circumstances of the present case as such those are not applicable to it.

10. Needless to mention here that observations, if any, made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants/accused on merits.

11. Above are the reasons for short order dated 15.10.2020.

J U D G E

Faheem/PA