

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S-864 of 2019.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

20.09.2019.

Mr. Khadim Hussain Laghari Advocate for the Applicants.

Ms. Sana Memon, A.P.G, Sindh.

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**ORDER**

**Zulfiqar Ali Sangi, J.**-Through instant application, Applicants Rasool Bux and Abdul Hakeem seek post-arrest bail in Crime No.83 of 2017, registered at Police Station B-Section Tando Allahyar, under section 17(3) Offence Against Property (Enforcement of Hudood) Ordinance, 1979. Initially, bail plea preferred by both applications was declined by learned 7<sup>th</sup> Additional Sessions Judge, Hyderabad vide order dated 09.08.2019.

2. As per contents of F.I.R, lodged by complainant Konbho at Police Station B-Section Tando Allahyar on 15.12.2017 at 03.00 a.m. four unknown persons by entering house of complainant, robbed cash amount of Rs.3,50,000 as well LCD, gold and silver ornaments and Mobile Phones alongwith sims and went away. Subsequently, complainant implicated present Applicants alongwith co-accused in his further statement recorded under section 162 Cr.P.C and thereafter challan against Applicants/accused was submitted while inserting sections 457, 397, 109 PPC.

3. Learned counsel for Applicants, *inter alia*, submits that the Applicants are innocent and have been falsely involved in this case; that there is inordinate delay of 13 hours in lodging the F.I.R; that initially the complainant lodged his F.I.R. against unknown persons; however, after due consultation, deliberation and with malafide intention has implicated the present Applicants in this case due to personal grudge through further statement; that firstly the I.O after failure to arrest the real culprits and recover the robbed amount

submitted report under "A" clause u/s 392 PPC but on account of further statement of the complainant present Applicants were arrested and report under section 173 Cr.P.C. was submitted before learned Magistrate; that no source of tangible evidence is shown from whom the complainant has come to know about the culprits of the offence; that the offence is not punishable with death penalty, imprisonment for life; hence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C; that the case has been challaned and the Applicants are not required for further investigation, therefore, the case of the Applicants requires further inquiry. Lastly, he prayed for grant of bail to Applicants.

4. Learned A.P.G. has contended that Applicants are habitual criminal and they are also involved in so many cases at various police stations, hence no question of false implication of the Applicants in commission of the present offence arise; that recovery of cash amount as well ornaments has been effected from both Applicants; that mere fact that the offence not fall within the prohibitory clause of section 497 Cr.P.C. is not meant that such offence has become bailable and the discretion still remains with the Court to consider entitlement of the Applicants to concession of bail. Lastly, she contended that in the fact and circumstances of the case, the Applicants are not entitled for bail.

5. I have heard the parties counsel and perused the material available on record.

6. Admittedly, names of the Applicants are not mentioned in the F.I.R. They were implicated in the commission of alleged offence in further statement of the complainant recorded on 21.02.2018 which too reflects that source of information has not been disclosed by the complainant that from where he came to know about the culprits. After the arrest of the Applicants their identification parade has not been held. There is no evidence regarding the articles allegedly recovered from the Applicants belong to complainant, as in the F.I.R. no description of any gold or silver ornament has been mentioned by complainant. Record further shows that initially the statements under section

161 Cr.P.C. of prosecution witnesses were recorded on 15.12.2017 in which also they have not nominated any of the accused persons. Their further statements were recorded on 21.02.2018 in which they have implicated the present Applicants, however, without disclosing the source of information about the involvement of the present Applicants in this case. In similar circumstances, the Honourable Supreme Court of Pakistan in the case of **Qamar alias Mitho v. The State and others** (PLD 2012 Supreme Court 222), has granted bail, wherein it was held as under:-

“3. It is not denied that the petitioner had not been nominated in the F.I.R. in any capacity whatsoever and his name had surfaced in this case for the first time after more than one month of the alleged occurrence when two persons namely Rehmat Ali and Muhammad Ashraf had nominated him as the unknown culprit who had accompanied the nominated culprits at the place of occurrence. It is admitted at all hands that both the above mentioned persons were not mentioned in the F.I.R. as eye-witnesses of the alleged incident. After such nomination of the petitioner it was necessary that a test identification parade ought to have been held so that the eye-witnesses mentioned in the F.I.R. could identify the petitioner as the culprit who had been mentioned in the F.I.R. as an unknown culprit but unfortunately that was never done. No specific or particular injury to any person had been attributed in the F.I.R. to the person who had been described therein as unknown culprit. Apparently the petitioner has no connection with the motive set up in the F.I.R. We have found it to be intriguing that those culprits who had specifically been nominated in the F.I.R. and had been attributed firing at the deceased have already been admitted to post-arrest bail but the petitioner who had never been nominated in the F.I.R. and whose implication in this case had come about through a backdoor has been refused the same relief. In these peculiar circumstances we have found that the case against the petitioner calls for further inquiry into his guilt.”

7. Record further shows that recovery as set up by the prosecution is also seems to be doubtful as such is shown to have been effected after the delay of about three months i.e. on 16.03.2018. That co-accused Veshram has also been granted bail by this Court vide order dated 07.09.2018.

8. In view of above, the Applicants have successfully made out their good prima facie case for their admission on post-arrest bail in the present case. Resultantly, the application is allowed and the Applicants are granted post-arrest bail subject to furnishing their solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention that the observation made hereinabove are tentative in nature and will not cause any prejudice to either party at the trial.

JUDGE

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