

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1060 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

02.09.2021

Mr. Dur Muhammad Mallah, Advocate along with Applicant (on bail).
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh along with ASI
Rasool Bux of P.S Gharo.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicants Riaz Ahmed alias Waqeel and Mir Murtaza seek their admission on pre-arrest bail in Crime No.85/2021 of Police Station Gharo, under Section 457/380/34 PPC. The bail plea preferred by the applicants before first forum was declined by means of order dated 04.06.2021, hence this bail application.

Since the facts of the prosecution case are already mentioned in the impugned order as well as FIR, which are annexed with Court file, therefore, there is no need to reproduce the same.

ASI Rasool Bux of P.S Gharo, present, files report, same is hereby taken on record. The complainant, despite of notice, has chosen to remain absent.

Learned counsel for the applicants submits that the case has been challaned by the police which is now pending for trial before the Court of 2nd Judicial Magistrate, Thatta vide Criminal Case No.Nill/2021 (re-the State Versus Mir Murtaza and others). He further submits that after furnishing surety before this Court, applicants have surrendered/joined the trial proceedings before the trial Court on 10.06.2021. In support of his contention, he submits true copies of diaries dated 07.06.2021, 10.06.2021 and 23.06.2021, same are hereby taken on record. He further submits that FIR is delayed for about 24 hours and the offence with which applicants stand charged carries maximum punishment up to seven years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C. He, therefore, prays for confirmation of bail.

Learned Addl. P.G, Sindh appearing for the State, opposes the bail application.

Heard arguments and perused record. Admittedly, the FIR is delayed for about 24 hours; whereas, distance between P.S and place of occurrence is only one kilometer and no plausible explanation has been furnished by the prosecution for such delay. The case is being tried by Judicial Magistrate where after recording evidence of the parties if prosecution may succeed to prove its charge against them even then punishment of more than three years cannot be visualized. Reliance can be placed upon the case of *AYAZ ALI and 2 others Versus The STATE (2000 P.Cr.L.J 1031)*. In the circumstances, reference can be had from the dicta laid down by Hon'ble Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733)* followed/recognized in an unreported case of *IFTIKHAR AHMED Versus The STATE*, passed by Hon'ble Supreme Court of Pakistan under Criminal Petition No.529 of 2021 in terms of order dated 14.07.2021, case against applicants requires further inquiry within meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicants **Riaz Ahmed alias Waqeel son of Ibrahim and Mir Murtaza so of Khan Muhammad Mallah** on 09.06.2021 is hereby confirmed on same terms and conditions.

Before parting with this order; however, it is clarified that the reasoning given in this order are tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to their surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE