

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1160 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

07.10.2021 :

Mr. Irtafa-ur-Rehman, advocate for the applicant / accused.

Mr. Naeemullah Bhutto, advocate for the complainant.

Mr. Zafar Ahmed Khan, Addl. P.G.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in Crime No.85/2020 registered against him on 03.02.2020 at P.S. Baloch Colony Karachi East under Sections 392 and 34 PPC.

2. According to the subject FIR lodged by the complainant Shahid Iqbal S/O Nausher, two young men and one woman committed robbery at his house, described in the FIR, on the date and at the time mentioned in the FIR. On his complaint, the FIR was registered against two young unknown men and one unknown woman. It appears that during investigation four persons viz. Muhammad Shehzad, Saba Iqbal, Muhammad Ashraf and Shehroz Qaiser were arrested by the investigating officer. Out of the above named persons, Muhammad Shehzad and Shehroz Qaiser were identified by the witness Mst. Razia Begum before the Judicial Magistrate. The confessional statement of the said Muhammad Shehzad was recorded before the Judicial Magistrate wherein he implicated the present applicant / accused. In this background, the present applicant / accused was arrested. The post-arrest Bail Application No.1288/2021 filed by the present applicant was dismissed by the learned IInd Additional Sessions Judge Karachi South vide order dated 04.06.2021.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the complainant due to enmity and family dispute ; there is apparent malafide on the part of the complainant and police ; the applicant was not nominated in the FIR and was implicated subsequently merely on the basis of the confessional statement of an alleged co-accused ; it is well-settled that the concession of bail cannot be declined on such ground ; there is no independent and/or incriminating evidence against the applicant, therefore, the matter requires further inquiry ; the applicant has no previous criminal record ; the final charge sheet has been submitted before the trial

Court ; and, there is no apprehension that the evidence will be tampered with or the witnesses will be influenced by the applicant, or he will abscond if he is released on bail. In support of his above submissions, learned counsel relies upon an unreported order passed by the Hon'ble Supreme Court on 17.05.2021 in Cr. Petition No.435/2021 (*Muhammad Sarfaraz Ansari V/S The State, etc.*).

4. On the other hand learned counsel for the complainant and learned Addl. P.G. submit that the above named co-accused had specifically implicated the applicant and, in view of Article 43 of the Qanoon-e-Shahdat Order, 1984, his statement cannot be ignored or discarded. The allegations of enmity, family dispute and malice have been denied by learned counsel for the complainant. Likewise, malice on the part of the police has been denied by learned Addl. P.G. They concede that no recovery was made from the applicant ; there is no independent evidence against the applicant ; the investigation in this case has been completed ; and, the final charge sheet has been submitted before the learned trial Court.

5. I have heard learned counsel for the applicant and complainant and the learned Addl. P.G., and have also examined the material available on record, particularly the police papers submitted by learned Addl. P.G. It is an admitted position that no recovery whatsoever was made from the applicant and, except for the confessional statement of the co-accused, there is no other, independent or incriminating material against the applicant to corroborate the said confessional statement. The witness viz. Mst. Razia Begum, who had identified Muhammad Shehzad and Shehroz Qaiser before the Judicial Magistrate, admittedly did not identify the present applicant. As held by the Hon'ble Supreme Court in *Muhammad Sarfaraz Ansari* (supra), the *prima facie* involvement of the co-accused cannot be determined at the bail stage merely on the basis of confessional statement of other accused without any other independent incriminating material corroborating the confessional statement. The applicant has made specific allegation of enmity and malice because of a family dispute relating to marriage against the complainant. He has also alleged that the police is in collusion with the complainant. In the above circumstances, this is a case which requires further inquiry.

6. Admittedly, the investigation in this case has been completed and the final charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. The

guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

7. In view of the above, the applicant / accused Khurram Shahzad son of Muhammad Yousuf Bhatti is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

J U D G E

BA 1160-2021/Big Orders Single/Court Work/Ndm