

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 1443 of 2021

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

**07.10.2021** :

Mr. Iqbal Shah, advocate for the applicant / accused a/w the applicant Hazrat Bilal (CNIC No.42101-9379606-9).

Complainant Amin-ul-Haq (CNIC No.42000-9906880-3) present in person.

Mr. Zafar Ahmed Khan, Addl. P.G. a/w SIP Muhammad Jamshed of P.S. Gulbahar.

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**NADEEM AKHTAR, J.** – Through this bail application under Section 498 Cr.P.C., the applicant has sought admission to bail pending trial in Crime No.68/2021 registered against him on 21.02.2021 at P.S. Gulbahar Karachi Central under Sections 392, 397 and 34 PPC. Vide order dated 02.08.2021, interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.50,000.00 and a P.R. bond for the same amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Amin-ul-Haq S/O Habib-ul-Haq, on 19.02.2021 at 02:50 p.m. three unknown persons came on a motorcycle to his shop described in the FIR ; two of them remained outside his shop, while one of them entered his shop and by threatening him with a pistol, took away the cash amount of Rs.380,000.00 lying at his shop ; after committing the robbery, the said person and his two companions fled on the motorcycle ; and, he could recognize all the three robbers. Upon his complaint, the FIR was registered against three unknown persons. It appears that one Maqsood Ahmed S/O Maqbool Ahmed was arrested by the police in some other crime who was identified in the police lockup by the present complainant as one of the three persons involved in the robbery at his shop ; and, when the said Maqsood Ahmed was interrogated by the police, he implicated the present applicant as the main accused who had planned the robbery at the shop of the complainant. In this background, the present applicant / accused was nominated by the complainant in his further statement recorded on 04.03.2021 under Section 161 Cr.P.C. The pre-arrest Bail Application No.1282/2021 filed by the applicant was dismissed by the learned V<sup>th</sup> Additional Sessions Judge Karachi Central vide order dated 17.06.2021.

3. It is contended by learned counsel for the applicant that there is an unexplained delay of two days in lodging the FIR ; the applicant has been falsely implicated in this case by the complainant in collusion with the police ; 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 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 ; there is a contradiction in the FIR and charge sheet as in the former the complainant had alleged that three unknown persons had come to his shop for robbery, whereas in the challan two persons are mentioned ; due to the aforesaid delay in lodging the FIR and the contradiction therein, the case of the prosecution against the applicant has become questionable and cannot be believed ; the applicant has no previous criminal record ; the 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.

4. On the other hand, it was contended by learned DPG that the statement made during interrogation by the co-accused Maqsood Ahmed and further statement recorded by the complainant cannot be discarded ; and, there is no reason to disbelieve the allegation made by the complainant and investigation carried out by the police. He points out that investigation in this case has been completed and charge sheet has been submitted before the learned trial Court. The complainant, who is present in person, reiterates the contents of the FIR and his further statement, and prays for the dismissal of this bail application.

5. I have heard learned counsel for the applicant, complainant and the learned Addl. P.G. and have also examined the material available on record. It is an admitted position that except for the statement of the co-accused, there is no other, independent or incriminating material against the applicant to corroborate the said statement, and it is not the case of the prosecution that the applicant was identified by the complainant. As held by the Hon'ble Supreme Court in an unreported case viz. Criminal Petition No.435/2021 (*Muhammad Sarfaraz Ansari V/S The State, etc.*) decided on 17.05.2021, 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 alleged malafide on the part of the complainant and police.

There is an admitted delay of two days in lodging the FIR. In the above circumstances, this is a case which requires further inquiry.

6. Admittedly, the investigation in this case has been completed and the 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 Hazrat Bilal son of Naimat Baz has made out a case for the grant of bail. Accordingly, the interim pre-arrest bail granted to him vide order dated 02.08.2021 is hereby confirmed on the same terms and conditions.

This bail application is allowed in the above terms.

J U D G E