

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.192 of 2021**

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<i>Date</i>	<i>Order with signature of Judge</i>
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*For hearing of Bail Application.*

**16.09.2021**

Mr. Qamar Riaz, Advocate along with Applicant (on bail).  
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.  
Complainant present in person.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicant Khalid Hussain seeks his admission on pre-arrest bail in Crime No.54/2021 of Police Station Surjani, Karachi, under Section 448/380/34 PPC. The bail plea preferred by the applicant before first forum was declined by means of order dated 29.01.2021, 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.

Ms. Farkhunda Jabeen, advocate, files her Vakalatnama on behalf of the complainant, same is hereby taken on record.

Pursuant to directions contained under earlier order, the trial Court has furnished its progress report with regard to the criminal case No.541/2021, which reveals that charge against accused was framed on 16.03.2021. The complainant of this case has been appearing before trial Court since 06.07.2021; however, is not producing his witnesses. Report furnished by the trial Court is hereby taken on record.

Learned counsel for the applicant submits that complainant is avoiding to proceed with the trial as is evident in the progress report and seeks dates on one or other pretext even by changing counsel. He further

submits that the FIR is delayed for about a month and the incident is un-witnessed one. The next contention of learned counsel is to the effect applicant after furnishing surety before this Court has surrendered before the trial Court and has joined trial proceedings without committing any negligence or fault on his part, therefore, prays for confirmation of the bail.

On the other hand, learned Addl. P.G, Sindh appearing for the State as well as counsel for the complainant, oppose the bail application on the ground that applicant is nominated in the FIR; besides, nothing has been recovered from his possession due to his non-arrest.

**Heard arguments and perused record.** Admittedly, the incident is said to have taken place on 11.12.2020 whereas, report thereof was lodged on 17.01.2021 i.e. with delay of about one month and seven days though the distance between P.S and place of occurrence is one and half K.M; however, no plausible explanation has been furnished by the prosecution for such an inordinate delay. The delay in criminal cases has always been held by the superior Courts to be fatal for the prosecution. PWs were examined by the I.O on 17.01.2021. The punishment provided by the law for the offences mentioned in the FIR is not over seven years; hence, does not exceed limits of prohibitory clause of section 497 Cr.P.C.

In the circumstances and in view of dicta laid down by this Court in case of *AYAZ ALI and 2 others Versus The STATE (2000 P.Cr.L.J 1031)* as well as 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 applicant 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 applicant **Khalid Hussain son of Fazal-u-Rehman** on 03.02.2021 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.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his 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***

Zulfiqar/P.A