

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1867 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

12.01.2021

Mr. A.J.K Marwat, Advocate along with Applicant/accused (on bail).
Syed Meeral Shah Bukhari, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Shafqat Ullah Khan seeks his admission on pre-arrest bail in Crime No.722/2020 of P.S Shahra-e-Faisal, Karachi, under Section 380 PPC. The bail plea preferred by the applicant was assigned to IIIrd Additional Sessions Judge, Karachi (East); where his request for anticipatory bail was declined by means of order dated 30.11.2020; hence this bail application.

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

Learned counsel for the applicant files true copy of case diary dated 21.12.2020 issued by the trial Court/XIXth Judicial Magistrate, Karachi (East), same is hereby taken on record. He submits that after furnishing surety before this Court, accused has surrendered before the trial Court where copies supplied to him and charge has also been framed on 07.01.2021. Now the case is fixed for recording evidence of the parties. He further submits that offence with which applicant stands charged, carries maximum punishment upto 07 years, therefore, does not exceed limits of prohibitory clause of Section 497 Cr.P.C. Hence, by granting this application, interim bail granted to him on 03.12.2020 may be confirmed.

Mr. Kamran Khan Memon, Advocate, files his Vakalatnama on behalf of the complainant, same is hereby taken on record. He opposes the bail application on the ground that accused is nominated in FIR; besides, the allegation of committing theft is assigned to him. He; however, is not in a position to controvert the fact that offence does not exceed limits of

prohibitory clause of Section 497 Cr.P.C; besides, it is tried by the Court of Judicial Magistrate.

Learned Addl. Prosecutor General, Sind also opposes the bail application.

No doubt, applicant is nominated in FIR; however, it is delayed for about 01 year, for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The offence with which applicant stands charged for Section 380 PPC, carries maximum punishment upto 07 years; hence, does not exceed limits of prohibitory clause of Section 497 Cr.P.C. The delay in criminal cases, particularly when it is unexplained, always presumes to be fatal for the prosecution. The case is being tried by Judicial Magistrate where after recording evidence of the parties, if the prosecution may succeed to prove its case against accused, even then punishment of more than 03 years cannot be visualized.

In the circumstances and in view of dicta laid down by the Hon'ble Supreme Court of Pakistan in case of *TANVEER Versus The STATE and another (PLD 2017 SC 733)*, case against applicant requires further inquiry within meaning of subsection 2 to Section 497 Cr.P.C. Consequently, application in hand is hereby allowed; interim bail granted earlier to applicant Shafqat Ullah Khan son of Muhammad Aslam Khan on 03.12.2020 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