

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.14 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application.

28.01.2021

Mr. Muhammad Hanif, Advocate for the Applicant.
Ms. Seema Zaidi, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Aslam seeks his release on post arrest bail in Crime No.1034/2020 of P.S Shah Latif Town, Karachi, under Section 392/397/34 PPC. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 16.11.2020; hence, he has approached to this Court through this Application.

The facts of the prosecution case in nutshell are that on 20.09.2020, complainant Adil Ashraf lodged FIR at police station Shah Latif Town stating therein that on 20.09.2020 from Baloch colony, he was going towards his house situated at Gulshan-e-Hadeed on his motorcycle, during traveling when he reached at Bhains Colony curve, he noticed that he was following by two motorcycles and when he reached near Razzaqabad traffic police post, he was intercepted by them, one of the culprits took out pistol and pointed out upon him, they robbed him of his wallet containing cash of Rs.100/-, in the meanwhile public gathered there, on seeing them accused persons endeavored to escape, but he apprehended one of them, was sitting on rear seat of motorcycle while his companion made his escape good on his motorcycle while making aerial firing. The apprehended culprit was maltreated by the public, in the meanwhile, police of P.S Shah Latif town reached at the spot. On inquiry made by HC Fateh Khan, the apprehended person disclosed his name to be Aslam son of Allah Warayo and further disclosed the name of escaped accused to be Asif son of Moosa. Police took his personal search and recovered robbed wallet of complainant and cash of

Rs.100/- from his possession. Hence, instant FIR was lodged at P.S Shah Latif Town, Karachi.

Learned counsel for the applicant submits though the applicant, as shown, allegedly was apprehended by the mob on spot; however, none from the public was associated as witness to witness the recovery proceedings. He next submits that no offensive weapon has been recovered nor was produced by him during investigation, therefore, it is beyond the approach of judicious mind that a person having empty handed could commit a robbery. He further submits that co-accused who was having offensive weapon was not arrested and has been placed in column No.2 of the chalan as an absconder. Learned counsel further submits that from the contents of the FIR, offences applied under FIR are not made out but police have wrongly added Section 397 PPC. Next submits that applicant is in custody right from the date of his arrest viz. 20.09.2020 and no progress in his trial has been effected; hence, prays for his release on bail.

Learned Deputy P.G, Sindh appearing for the State opposes the bail application on the ground that applicant is nominated in the FIR and was found in possession of the robbed wallet containing Rs.100/- belonging to the complainant.

Heard arguments, record perused. Admittedly, the applicant is shown to have been arrested by the public/mob on spot, yet none of the members from said mob was made as witness or attesting witness of the recovery proceedings. Non-association of independent witness at the time of his arrest as well as recovery, show that the persons who were disinterested were not joined and if they would have been joined they have not supported the case of prosecution. The complainant himself is the attesting witness and he being interested one, his testimony requires scrutiny at the time of trial. As far as accusation against applicant is concerned, same is yet to be established by the prosecution after recording evidence of its witnesses and the trial Court being competent has to determine whether he is involved in the offence or otherwise. Moreover, the applicant was shown as empty handed, therefore, such admission on the part of complainant is sufficient to hold that case against applicant is of

further inquiry. The case has been challaned and he is no more required by the police for investigation or interrogation.

The upshot of above discussion is that case against applicant requires further inquiry. Consequently, instant bail application is hereby allowed. Applicant Aslam son of Allah Waraya, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court where is case is pending for proceedings or the trial.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A