

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1249 of 2021

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

20.10.2021 :

Mr. Muhammad Aslam Shar, advocate for the applicant.

Mr. Abdul Latif Memon, 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.87/2021 registered against him on 25.03.2021 at P.S. Maripur Karachi West under Sections 407 and 34 PPC.

2. According to the subject FIR lodged by the complainant Fayyaz Muhammad, four (04) containers were handed over by him to the present applicant / accused on 26.01.2021 and 12.02.2021, out of which two (02) were to be transported to Lahore and two (02) to Multan ; the said containers were misappropriated by the applicant and one Dawood ; and, the applicant did not return the said containers nor did he pay the rent thereof to the complainant. In view of the registration of the FIR, the present applicant / accused was arrested. The post-arrest Bail Application Nos. 42/2021 and 1886/2021 filed by the applicant were dismissed by the learned Judicial Magistrate and Additional Sessions Judge Karachi concerned vide orders dated 08.04.2021 and 30.04.2021, respectively.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the complainant ; there is an apparent malafide on the part of the complainant and police ; there is a delay of about 45 days in lodging the FIR ; the matter requires further inquiry ; 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 of the prosecution will be influenced by the applicant, or he will abscond if he is released on bail. He submits that post-arrest bail has been granted to the co-accused Dawood by the learned Additional Sessions Judge concerned vide order dated 19.04.2021, copy whereof has been placed on record by him.

4. On the other hand learned counsel for the complainant submits that the role of the present applicant and that of the co-accused Dawood in the FIR are distinct inasmuch as the containers were handed over to the applicant and it

was his responsibility to transport the same to Lahore and Multan and also to pay the rent to the complainant. He further submits that bail cannot be granted to the applicant merely on the ground that such concession has been granted to the co-accused.

5. Learned APG has adopted the submissions made on behalf of the complainant. While conceding that the charge sheet has been submitted before the learned trial Court, he states that the case is likely to be concluded soon.

6. 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. Perusal of the FIR shows that the allegation of misappropriation of the containers has been made by the complainant not only against the applicant, but also against the co-accused Dawood. Thus, prima facie it appears that the role assigned in the FIR to both the accused is the same. As the above named co-accused has been admitted to post-arrest bail, the present applicant is also entitled to the same concession in view of the rule of consistency. Moreover, the delay in lodging the FIR is apparent as the containers were allegedly handed over to the applicant on 26.01.2021 and 12.02.2021, whereas the FIR was lodged on 25.03.2021. In the above circumstances, this is a case which requires further inquiry.

7. The applicant is behind the bars for the last about eight (08) months. 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.

8. In view of the above, the applicant / accused Malik Amir son of Noor Khan 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