

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.800 of 2021
Criminal Bail Application No.821 of 2021

Date *Order with signature of Judge*

For hearing of Bail Application

13.09.2021

Mr. Ali Haider Zaman, advocate for applicant in Cr. B.A.No.800 of 2021.

Mr. Muhammad Ayoub Awan, advocate for applicant in Cr. B.A.No.821 of 2021.

Ms. Rahat Ehsan, Addl.P.G.

Complainant Muhammad Bilal Paracha present in person.

ORDER

Muhammad Saleem Jessar, J:- By this common order, I will dispose of these two bail applications, as the both arise out of one crime bearing No.78/2021 of P.S. North Nazimabad, AVLK, under Section 397/34 PPC, and common questions of law as well as facts are involved.

2. Through these bail applications, the applicants Sohail Khattak son of Mohsin Ali Khan and Saeed Ahmed son of Noor Ahmed claim their release on post-arrest bail in Crime No.78 of 2021 P.S. North Nazimabad, AVLK, under Section 397/34 PPC read with section 411 PPC. The case against them has been challaned by the police which is now pending for trial before the Court of Vth Additional Sessions Judge, Karachi Central vide Sessions Case No.658 of 2021 (Re-State Versus Hidayatullah and others). The bail plea preferred by the applicants before the trial Court was declined by means of a common order dated 26.04.2021; hence these bail applications.

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

4. Learned counsel for the applicants submits that names of the applicants are not transpiring under the FIR, besides both the applicants alongwith co-accused were arrested by the police on 09.03.2021, yet they were not subjected to identification parade, therefore, they cannot be

termed to be the accused of the crime, more particularly, when no identification parade was held and submits that they may be granted bail. In support of their contention, they place reliance upon the cases of *Muhammad Rafique Vs. The State* (1997 SCMR 412), *Muhammad Rehan Vs. The State* (2014 MLD 1317), *Abdul Waheed Khokhar Vs. The State* (1999 P Cr.LJ 412), *Muhammad Suleman Vs. Riasat Ali and another* (2002 SCMR 1304) and *Muhammad Kazim Vs. The State* (2005 P Cr. L J 531).

5. On the other hand, learned Addl. P.G, Sindh, opposes the bail application on the ground that all the accused were found sitting inside the car, which was stolen on 22.02.2021 and the offence committed by the applicants carries maximum punishment.

6. Complainant Muhammad Bilal Paracha, present in person, submits that though these accused were not shown to him after their arrest nor they were subjected to identification parade, yet a week earlier the father of accused Sohail Khattak shown his picture to him and therefore, he submits that he is not the same person, who was found in possession of the Car at the time of its recovery. As far as accused Saeed Ahmed is concerned, he submits that he too is unknown to him and he had not picked him up before any forum, yet has no objection. He further submits that co-accused Azizullah was produced before the Court of IVth Judicial Magistrate Karachi Central on 15.03.2021, where he (complainant) had picked him up in the identification parade to be the same and real culprit of the offence.

7. **Heard arguments and record perused.** Admittedly, the incident as shown had occurred on 22.02.2021 and FIR thereof was lodged by the complainant on 23.02.2021 against unknown culprits. The arrest of accused was effected on 09.03.2021 though all the accused allegedly were arrested jointly, yet the police had produced only one accused namely Azizullah for identification test and rest of three including applicants were not produced and subjected to identification parade. It has not come on record as to why identification test of the applicants through complainant was not held, when their names do not find place in the FIR. It is settled law that holding of identification parade becomes necessary in cases, where names of the culprits are not given in the FIR. The holding of such test is checked against

the false implication and it is a good piece of evidence against the genuine culprits, therefore, holding of identification test cannot be dispensed with, simply because of the reason that the present accused of committing such robbery, have subsequently been found in possession of the robbed vehicle. Reliance in this respect has rightly been placed by learned Counsel upon the case of MUHAMMAD SULEMAN v. RIASAT ALI and another (2002 SCMR 1304) in which the honourable Supreme Court of Pakistan has maintained the order for grant of bail to the accused by the High Court while observing that *"non-holding of identification parade in respect of respondents after the arrest brings his case within the purview of subsection (2) of section 497, Cr.P.C."* It is also not necessary that the eye-witness of the robbed property should have witnessed the recovery of the robbed property. Mere saying the words by the prosecution that the applicants were found in possession of the robbed vehicle at the time of its recovery, is not sufficient to believe that the accused had committed a non-bailable offence. Moreover, the recovery of robbed vehicle was effected adjacent to Imtiaz General Store, which is a public thoroughfare; however, not a single witness from the public was associated to witness the recovery proceedings, therefore, the provisions of Section 103 Cr.P.C. were not complied with by the police. Such point and many others have to be looked into at the time of trial after producing the prosecution evidence. However, at present, I am of the opinion, that the applicants appear to have made out a good prima-facie case for their release on bail, as their case is purely covered by Sub-Section 2 to Section 497 Cr.P.C.

8. In view of the above stated circumstances, these bail applications are accepted and are allowed with the result that applicants namely Sohail Khattak son of Mohsin Ali Khan and Saeed Ahmed son of Noor Ahmed are granted bail subject to furnishing their solvent surety in the sum of Rs.100,000/- (One Lac) each and P.R. bonds in the like amount to the satisfaction of the learned trial Court.

9. It is pertinent to mention 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 applicants, if they are found misusing the concession of bail.

10. These Criminal Bail Applications are disposed of in the terms indicated above. Office to place copy of this order in connected bail application.

JUDGE

Imran