

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1999 of 2020**

---

*Date* *Order with signature of Judge*

---

*For hearing of Bail Application.*

**16.02.2021**

M/s. Muhammad Zahid and Abdul Moeed Zahid, Advocates along with Applicants (on bail).

Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh.

Mr. Ghulam Akber Uqaili, Advocate for the Complainant.

**ORDER**

**Muhammad Saleem Jessar, J:-** Through this application, applicants (i) Saindad, (ii) Khair Muhammad, (iii) Abdul Waheed, (iv) Muhammad Usman and (v) Babu seek their admission on pre-arrest bail in Crime No.152/2020 of Police Station Gharo, under Section 382/457/34 PPC. The bail plea preferred by the applicants before the first forum was declined by means of order dated 17.12.2020, hence this bail application.

The brief facts of the prosecution case are that complainant is Zamindar and businessman of Pan. He used to visit Karachi for selling Pan and on return he used to reside in his house in Memon Mohalla Gharo and then on next day he used to return to his village Taluka Keti Bunder. On 11.10.2020 complainant went to Memon Village Malir for selling Pan and returned during night hours at his house at Gharo. He was present in his Otaq constructed over the house along with his cousin Abdul Wahid and Hayat went at about 2200 hours accused Saindad scale over the door and open the same from inside. Then accused Nana alias Khair Muhammad, Usman son of Chaker, Waheed all armed with pistols and Baboo armed with pistol forcibly entered inside the house. The accused were criminal type persons and complainant was not on good terms with them. It is alleged that accused Saindad Kalmati pointed his pistol on forehead of complainant and asked him to handover the cash amount brought from mandi (fruit & vegetable market) as they had tracked him. On force of weapon, accused Saindad robbed Rs.112500/- from complainant and accused Baboo robbed Rs.1600/- from Abdul Wahid and accused Saindad robbed Rs.2300/- from PW Hayat. The culprits also snatched golden ring of worth Rs.70000/- from complainant and then caused kicks and fists blows to

complainant. They also issued death threats to complainant in case he reported the matter with police. Thereafter all accused went away in Suzuki pickup. The complainant informed to nekmarads but nothing was done by them. Thereafter complainant approached trial Court and after obtaining order lodged FIR of the incident.

Learned counsel for the applicant submits that the FIR is delayed for about 15 days whereas the case after investigation was disposed of under 'B' class and such report in terms of Section 173 Cr.P.C was filed before Judicial Magistrate-II, Thatta, who did not concur his opinion with police report, therefore, issued Bailable Warrants against applicants by directing I.O to file list of witnesses and ultimately the case has been sent up to the Court of Sessions for trial. In support of his contention, he has filed copy of order dated 23.12.2020 passed by the Judicial Magistrate under cover of his statement dated 28.01.2021. He next submits that in view of the investigation conducted by the I.O, case against applicants requires further inquiry and prays for grant of bail application.

Learned Addl. P.G, Sindh, appearing for the State opposes the bail application on the ground that huge amount has been shown to have been stolen away forcibly by the accused; besides, they are nominated in the FIR; hence, their case is not fit to be considered particularly for anticipatory bail.

Learned counsel for the complainant also opposes the bail application on the ground that I.O with his malafide intentions has disposed of the case and the case being genuine one has rightly been entertained by the Magistrate, therefore, accused are not entitled for grant of anticipatory bail.

**Heard arguments and perused record.** Admittedly, the incident is said to have taken place on 11.10.2020; whereas, report thereof, was lodged on 26.10.2020 i.e. with delay of about 15 days for which 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 and such delay particularly at bail stage can be considered in favour of the accused. The accused, after furnishing surety before this Court, have joined the trial proceedings; whereas, their case is pending for trial vide Sessions Case No.46/2021 (re-the State Versus Saindad and others), therefore, no complaint with regard to misuse of concession extended to accused has been brought on record; besides, they have surrendered before the trial Court;

whereas, accusation against them is to be determined by the trial Court after recording evidence of the parties. As far as instant bail application is concerned, in view of above circumstances, I am of the opinion that a prima facie case for grant of anticipatory bail in terms of Section 498-A Cr.P.C is made out and requires further inquiry. Consequently, instant Criminal Bail Application is hereby allowed; interim bail granted earlier to applicants (i) Saindad son of Chando, (ii) Khair Muhammad son of Chando, (iii) Abdul Waheed son of Chaker Khan, (iv) Muhammad Usman son of Chaker Khan and (v) Babu son of Haji Khan on 21.12.2020 is hereby confirmed on same terms and conditions.

Applicants present before the Court are directed to continue their appearance before the trial Court without negligence and in case they may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against them as well to their 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, over fax, for compliance.

**JUDGE**

Zulfiqar/P.A