ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1877 of 2020

Date	Order with signature of Judge

For hearing of Bail Application.

<u>19.02.2021</u>

Mr. Ghulam Nabi Shar, Advocate along with Applicants (on bail).
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.
Mr. Zulfiqar Ali Shaikh, Advocate for the Complainant.

O R D E R

<u>*Muhammad Saleem Jessar, J:-*</u>   Through this application, applicants (i) Zargoon Shah, (ii) Mujahid Khan, and (iii) Muhammad Arshad, seek their admission on pre-arrest bail in Crime No.310/2020 of Police Station Bin Qasim, Karachi, under Section 457/454/380/34 PPC. The bail plea preferred by the applicants before first forum was declined by means of order dated 01.12.2020, 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 submits that FIR is delayed for about 15 days and the offence is unseen. He next submits that mere their names are transpiring in FIR and nothing incriminating has been shown to have been recovered by the police from their possession; besides, co-accused Gul Umar has been bailed out by the trial Court. In support of his contention, he submits photocopy of order dated 27.10.2020 passed by the trial Court, same is hereby taken on record. Lastly, he contends that the offence does not exceed the limits of prohibitory clause of section 497 Cr.P.C and prays for grant of the bail application.

Learned Assistant P.G, Sindh in view of above factual position, does not oppose the bail application; however, learned counsel for the complainant opposes the bail application on the ground that applicants are nominated in FIR; besides, recovery is yet to be effected from their possession. He; however, admits that case has been challaned which is now pending for trial before the trial Court for recording evidence of the prosecution witnesses.

Heard arguments and perused record. Admittedly, the offence is unseen and the FIR is delayed for about 15 days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay. The co-accused on identical role has been bailed out by the trial Court, therefore, in such like situation, bail becomes right of the accused and refusal will be an exceptional. The sections applied in the FIR are being tried by the Judicial Magistrate where after recording evidence of the parties if prosecution may succeed to prove its charge against them even then punishment of more than 3 years cannot be visualized.

In the circumstances and in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of *MUHAMMAD TANVEER Versus The STATE and another (PLD 2017 SC 733),* case against applicants requires further inquiry within the meaning of sub-section 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicants **(i) Zargoon Shah son of Mangal Khan, (ii) Mujahid Khan son of Mangal Khan and (iii) Muhammad Arshad son of Wali Jan** on 04.12.2020 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.

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. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A