

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.B.A.No.S- 664 of 2013

Cr.B.A.No.S- 705 of 2013

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing: 04.12.2013.

Date of order: .12.2013.

M/s Rao Faisal Ali and Ali Hassan Chandio, Advocates for applicants/accused.
Syed Meeral Shah, D.P.G. for the State.

Mr. Ghulam Nabi Meo, Advocate for complainant.

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NAIMATULLAH PHULPOTO, J:- By this single order, I will dispose of aforesaid bail applications moved on behalf of the applicants/accused Gulzarf alias Rana s/o Rasheed Ahmed, Muhammad Bux s/o Muhammad Uris and Jean s/o Kirrar as the same are arising out of one and same Crime No.68/2013 registered at Police Station Umerkot U/s 394, 34 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 23.06.2013 at 2015 hours complainant Kanwar Lal lodged FIR, alleging therein that he owns a Jewelry shop in Jewelry Market, Umerkot. In the evening as usual he took the cash and ornaments of gold in a bag and proceeded to the house. It is alleged that complainant took cash of Rs.14,45,000/- and ornaments of gold weighing 15 tolas in a cloth bag. When he reached at the outer door of his house, it was 8-15 p.m, three culprits whose faces were opened appeared on Motorcycle. They were armed with pistols. One of the accused caused pistol butt on the head of complainant and two persons snatched the bag from the hands of complainant containing cash and ornaments of gold. Complainant raised cries which attracted PWs Vinod Kumar and Bhavis Kumar. Culprits while seeing them drove away on their Motorcycle. Complainant was taken to the Government Hospital, Umerkot. After first aid, he was

discharged and then on the next day he appeared at Police Station and lodged FIR on 24.06.2013 at 1230 hours. It was recorded vide Crime No.68/2013 U/s 394, 34 PPC.

3. During investigation accused Muhammad Bux was arrested on 27.06.2013, Jean on 01.07.2013 and Gulzarf alias Rana on 03.07.2013. Identification parade of accused Muhammad Bux and Jean was held on 11.07.2013 before the eye witnesses. On the conclusion of investigation, challan was submitted against the accused U/s 394, 34 PPC.

4. M/s Rao Faisal Ali and Ali Hassan Chandio, learned advocates for the applicants/accused contended that neither the names of the applicants/accused transpire in the FIR nor there descriptions have been given; further statement of the complainant was recorded on 11.07.2013. It is argued that evidentiary value of further statement is yet to be determined at trial. It is also argued that recoveries have been foisted upon the accused and identification parade of accused Muhammad Bux and Jean was held after 10 days of arrest. It is also argued that 161 Cr.P.C. statements of PWs were recovered after 13 days of the registration of FIR. It is submitted that regarding the aforesaid FIR, re-investigation has been ordered. Lastly, it is argued that there was enmity in between the applicant/accused Gulzarf and complainant and one Faqeer Ahmed Rana, the uncle of accused Gulzarf has filed a C.P.No.1428/2013 against SHO PS Umerkot and others. In support of their contentions, reliance has been placed on the cases reported as Shah Nawaz and 2 others v. The State (2004 MLD 1942 and Muhammad Nasir v. The State (2010 P.Cr.L.J 704).

5. Syed Meeral Shah, learned D.P.G. assisted by Mr. Ghulam Nabi Meo, learned advocate for complainant argued that applicants/accused have been implicated by the complainant in further statement; robbed property was recovered from the applicants/accused during investigation and accused were identified by the eye witnesses in identification parade. In support of their contentions, reliance has been placed on the case reported as Amin Baz v. The Stae (2013 YLR 891).

6. Heard learned counsel for the parties and perused the material available on record.

7. I am inclined to grant bail to the applicants/accused for the reasons that FIR was lodged by complainant Kanwar Lal on 24.06.2013 in which names of the applicants/accused did not transpire nor their descriptions have been mentioned; further statement of complainant was recorded on 11.07.2013 in which complainant disclosed the names of applicants/accused. Evidentiary value of further statement is yet to be determined by the trial Court. There was also an unexplained delay in holding of identification parade. Moreover after 10 days of arrest of applicants/accused, identification parade was held. Prima facie, allegation against the applicants/accused was only of possession of robbed articles which offence prima facie fell u/s 411 PPC which is punishable for 03 years R.I. Embargo put by Section 497 Cr.P.C. is not attracted in the case in hand. In the case of Shah Nawaz (Supra), it has been held as under:-

“Mr. Jai Jai Veshno contended that arrest was made by the police belonging to Police Station Chak and after eight days the identification test was held through the complainant party who also belongs to the same Police Station where the accused were kept for 8 days. This is the only piece of evidence against accused Shahnawaz and Muhammad Nawaz and I agree with Mr. Jai Jai Veshno and Mr. Kourejo that in such circumstances the case would require further enquiry. However, the bail plea of Ghulam Ali is not pressed therefore, without touching the merits of the allegations against the said applicant, his application is dismissed while other two namely Shahnawaz and Muhammad Nawaz are granted bail in the sum of Rs.50,000/- each with one surety each and P.R. bond in the like amount to the satisfaction of the trial Court.”

8. For the above stated reasons while relying upon the above cited authority, prima facie, case against the applicants/accused requires further inquiry as contemplated u/s 497 Cr.P.C., therefore, concession of bail is extended to the applicants/accused. Accordingly, the applicants/accused are granted bail subject to furnishing solvent surety in the sum of Rs.200,000/- (Two lac) each and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court at the time of deciding the case on merits.

JUDGE

Tufail

