

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2170 of 2021

Shahid alias Burger alias Boss
and Amir alias Jazu

Applicants through:

Mr. Imdad Ali Malik and Mumtaz Ali
Mehdi, advocates

The State,
through:

Ms. Rubina Qadir, DPG along with SI
Sharafat Ali PS Gizri, Karachi

Date of hearing:

28.12.2021

ORDER

Adnan-ul-Karim Memon J. The applicants Shahid alias Burger alias Boss and Amir alias Jazu are seeking post-arrest bail in FIR No.427/2021 for offenses under Section 397/34 PPC registered at PS Gizri, inter alia on the ground that they are erroneously booked in the case of purported decoity committed in the house of complainant Ahsan Anees; that complainant has not given names and description of alleged culprits in the F.I.R; no identification parade took place whereby the complainant might have said against the applicants; that this is a case of mis-identity of the accused person.

2. M/s. Imdad Ali Malik and Mumtaz Ali Mehdi advocates have submitted that the complainant claimed that on 16.9.2021 at about 1315 hours his mother called him on phone, that five dacoits entered into his house and confined three domestic servants, her and his father in a room, and committed theft of 2 gold bangles, 1 gold chain, 3 rings, 1 gold set, 2 diamond tops, 1 diamond Karra, and cash approximately Rs.15,000/-, and fled away, he reached there and saw them, however, he failed to identify them at the time of their arrest and police managed to arrange one witness who was not named in the F.I.R to identify the applicants after a considerable period; that before involving of the applicants in the said crime, the family of the applicants filed constitution petitions before this court whereby notices were issued and thereafter the police cooked up the story and shown arrest of the applicants in the present crime. They prayed for allowing the bail application.

3. Complainant though served has chosen to remain absent and in his absence learned DPG has assisted this Court and submitted

that in the identification parade held on 26.10.2021, one witness namely Muhammad Sajjad identified the applicants thus the applicants are not entitled to concession of post-arrest bail. At this stage, I asked learned counsel whether there is any delay in conducting the identification parade, she candidly conceded that the alleged offense took place on 16.9.2021 and the applicants were arrested on 15.10.2021 and their identification parade was held on 26.10.2021 after a delay of eleven days. Investigating Officer present in Court has submitted that he tried his level best to convince the complainant to come forward to identify the accused persons, but he blatantly refused for the reasons best known to him. Again I asked the learned DPG whether the name of witness Muhammad Sajid who allegedly identified the applicants in the identification parade is disclosed in the FIR or otherwise, she after going through the contents of the FIR has submitted that name of Muhammad Sajid is not disclosed in the FIR; again I asked her as to how Muhammad Sajid, whose name is not disclosed in the FIR, has participated in the identification process, she has no answer to the query raised by this Court. Be that as it may, I have heard learned counsel for the applicants and learned DPG and have also scanned the record with their assistance. The tentative assessment of the record reveals as follows.

- i) *No description of the accused has been given in the FIR.*
- ii) *It is a matter of record that the Applicants when arrested in the crime were not put to identification parade through complainant or eyewitnesses mentioned in the FIR.*
- iii) *The learned DPG as well as IO present in Court were also unable to satisfy on this count but reiterated that one witness had also identified them in an identification parade in the present crime.*
- iv) *The complainant had not seen the applicants while committing alleged robbery and the name of witness Muhammad Sajid (driver) is also not mentioned in the FIR, which requires to be established through evidence.*
- v) *The family of the applicants filed constitution petitions bearing No.5997/2021 on 23.9.2021 and 5998/2021 on 02.10.2021, before this Court, disclosing their pickup by the police before the alleged date of the incident.*

- vi) The delay of eleven days in holding the identification parade is also one of the questions that require further probe as provided under Section 497(2) Cr.P.C.*
- vii) Prima facie it appears that in the present circumstances of the case, the identification parade itself alone cannot be the basis of denying the post-arrest bail to the applicants.*
- viii) It appears that the Applicant's case falls within section 497(2), Cr.P.C. as one of further inquiry.*

4. From the tentative assessment of the record as discussed above, I am of the view that the applicants have made out a case for grant of post-arrest bail in Crime No.427/2021 registered for the offense under Section 397 read with Section 395/412 PPC of PS Gizri, Karachi.

5. Above are the reasons for the short order of 28.12.2021 in terms of which the Applicants Shahid alias Burger alias Boss and Amir alias Jazu were admitted to bail in FIR No.427/2021 for offenses under Section 395/412 read with Section 397 PPC registered at PS Gizri, Karachi subject to their furnishing solvent surety in the sum of Rs.200,000/ each with P.R. Bond in the like amount to the satisfaction of the Trial Court.

JUDGE