

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 1309 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

**09.12.2021 :**

Mr. Abdul Ghaffar Shar, advocate for the applicant / accused.

Complainant Aijaz Ali (CNIC No.41102-0764340-1) present in person.

Mr. Saleem Akhtar, Addl. P.G. a/w SIP Amanullah of P.S. SITE Super Highway.

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**NADEEM AKHTAR, J.** – Through this bail application under Section 497 Cr.P.C., the applicant / accused Shabbir Ahmed seeks admission to post-arrest bail in Crime No.623/2021 registered against him on 12.05.2021 under Section 397 PPC at P.S. SITE Super Highway Karachi East.

2. According to the subject FIR lodged by the complainant Aijaz Ali S/O Mushtaq, he and his two companions Mushtaq Ahmed and Muhammad Murad were intercepted by two persons on the day and at the time and place mentioned in the FIR ; the said two persons, who were armed with pistols, robbed him of Rs.2,250.00 ; upon their raising hue and cry, one of the said persons ran away while the other slapped him and fired a shot from the pistol in the air ; during the scuffle, the said other person was caught by him and his companions and meanwhile the police also reached the scene of crime and apprehended the said person from whom Rs.2,250.00 and a pistol with a loaded magazine with three live rounds were recovered ; and, the said person disclosed his name as Shabbir S/O Maula Bux and that of his companion as Javed Lashari who had escaped the scene of crime. Upon registration of the subject FIR, the present applicant / accused had filed post-arrest Bail Application No.2477/2021 which was dismissed by the learned IV<sup>th</sup> Additional Sessions Judge Malir Karachi vide order dated 22.06.2021.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case by the complainant due to enmity and family dispute as the complainant's sister Najma has contracted marriage with the applicant without her family's consent ; there is apparent malafide on the part of the complainant and the police ; there is no independent and/or incriminating evidence against the applicant, therefore, the matter requires further inquiry ;

the charge sheet has been submitted before the trial Court ; and, there is no apprehension that the evidence will be tampered with or the witnesses will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand the complainant and learned Addl. P.G. submit that the applicant / accused has been nominated in the FIR with a specific role, and he was caught red-handed at the scene of the crime with the money and the pistol. The allegations of enmity, family dispute and malice have been denied by the complainant. Likewise, malice on the part of the police has been denied by learned Addl. P.G. They, however, concede that there is no independent evidence against the applicant ; the investigation in this case has been completed ; and, the final charge sheet has been submitted before the learned trial Court.

5. I have heard learned counsel for the applicant, the learned Addl. P.G. and the complainant and have also examined the material available on record including the police papers produced by the learned Addl. P.G. It is an admitted position that there is no other, independent or incriminating material against the applicant to corroborate the allegations made against him in the FIR. Therefore, the *prima facie* involvement of the applicant cannot be determined at the bail stage merely on the basis of the allegations made against him without any other independent incriminating material corroborating such allegations. The applicant has made a specific allegation of enmity and malice because of his marriage with the complainant's sister whose statement under Section 164 Cr.P.C. is available on record wherein she has stated that she has married the applicant with her own free will and without her family's consent ; the applicant has not kidnapped her ; and, she and her husband (applicant) apprehend danger from her brothers. The applicant has also alleged that the police is in collusion with the complainant. In the above circumstances, this is a case which requires further inquiry.

6. Admittedly, the investigation in this case has been completed and the charge sheet has been submitted before the trial Court. Therefore, the applicant shall not be required for any further investigation, and there is no question or probability that the evidence will be tampered with by him or that the prosecution witnesses will be influenced by him if he is enlarged on bail. Moreover, the offence alleged against the applicant does not fall within the prohibitory clause of Section 497 Cr.P.C. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the

trial Court. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

7. In view of the above, the applicant / accused Shabbir Ahmed son of Maula Bux is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

J U D G E