

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Criminal Bail Application No. 2398 of 2021**

Applicant : Noor Husain Abbasi Khoro s/o Haji Muhammad Abbasi, through Mr. Hashmat Khalid, Advocate

Respondent : The State, through Ms. Rahat Ehsan, Additional Prosecutor General alongwith SIP Amanullah of PS SITE Superhighway Industrial Area, Karachi.

Complainant : Syed Shahzad Tariq  
(nemo, complainant refused to receive notice)

Date of hearings : 02.02.2022 & 03.02.2022  
Date of order : 03.02.2022  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Applicant/accused Noor Husain Abbasi Khoro s/o Haji Muhammad Abbasi through instant criminal bail application seeks post-arrest bail in Crime No. 1397/2021, registered at P.S. Site Super Highway Industrial Area, Karachi under Section 397, P.P.C. His earlier application for the same relief bearing No. 5245/2021 was heard and dismissed by the Court of IV<sup>th</sup> Additional Sessions Judge Malir, Karachi vide order, dated 07. 012.2021.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. lodged on 05.10.2021 by the complainant Syed Shahzad Tariq, bike rider in Chishti Box Factory Pvt. Ltd., are that having drawn Rs. 11,68,061/- from Bank Al-Habib, Site Branch he, alongwith one Jawed Jabbar, was on his way to his company and at 12:20 p.m. reached Dewar Estate Enterprise where two persons riding on 125 motorcycle robbed the amount on the strength of pistol and ran away.

3. Learned counsel for the applicant has contended that applicant is innocent and has falsely been implicated in this case by the police; that

nothing incriminating has been recovered from the possession of the applicant, who was arrested on 04.10.2021 in Crime No.1457/2021, under section 23-A (i), Sindh Arms Act and, thereafter, his arrest was shown on 22.10.2021 in the present case as facilitator; that no robbed money was recovered from applicant; that the vicarious liability and common intention cannot be established without recording pro and contra evidence of the parties; hence, the question of applicant's guilt would require further enquiry; that the alleged offence does not fall within prohibitory clause of Section 497, Cr, P.C. being punishable for seven years; therefore, the applicant is entitled for the grant of bail.

4. On the other hand, learned DPG has opposed for grant of bail on the ground that the complainant and P.W.-Javed Jabbar have fully implicated the applicant with the commission of alleged offence; that when the complainant withdrew amount from bank, the applicant was present in the bank and through mobile phone he conveyed information to his accomplices of departure of complainant from bank with heavy cash amount; that the presence of applicant on the alleged day and time is supported with CCTV footage recorded in Bank cameras and after his arrest he received his share from robbed amount and police recovered Rs.4,00,000/- from his house.

5. Heard the learned counsel for the applicant, learned Addl. P.G. and perused the material available on record with their assistance.

6. It is an admitted position that there is neither direct allegation against the applicant for committing alleged robbery nor he has been identified by the complainant and eye-witness as one of the two accused who robbed the cash amount from them. As per prosecution case, the applicant was present in the bank and he conveyed information to robbers, however, it is an admitted

position that there is no CCTV recording showing that on the alleged day and time the applicant was talking with any person on his mobile phone inside the Bank. Police has submitted phone data of mobile No. 923303510215 that received a call from mobile No.923357218256, on 5.10.2021 at 1219 hours, from location of Khameeso Goth, Bashir Chowrangi, New Karachi and phone data of an outgoing call from mobile No.923357218256 to mobile No.923303510215, on 5.10.2021 at 1219, hours having location of North Karachi Industrial Area, however, nothing on record is available to show that any of the said mobile numbers is/was in the use of applicant. Moreover, the location from where the said incoming or outgoing calls were received and made is not apparently the location of the Bank Al-Habib Branch.

7. In the instant case, F.I.R. has been lodged against the two un-known accused persons for robbing the cash amount from the complainant. The allegation against the applicant is that of facilitating the said robbers by communicating the departure of the complainant from Bank with cash amount. The question of alleged involvement of the applicant with the commission of alleged offence will have to be determined at the trial to see if his guilt under section 397/34, P.P.C. is established as alleged by the prosecution. The alleged offence does not fall within prohibitory clause of Section 497, Cr. P.C. The applicant is behind the bar since the day of his arrest and he is no more required by the police for further investigation. Accordingly, by allowing instant application, I admit the applicant to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.1,00,000/- (*Rupees One Lac only*) and PR bond in the like amount to the satisfaction of the trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits and if applicant in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE

*Athar Zai*