

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 2057 of 2021

Applicant : Ashfaq s/o Fazal Kareem, through
Mr. Maqbool-ur-Rehman, advocate

Respondent : The State, through Ms. Rahat Ehsan, Addl. P.G.

Date of hearing : 10.02.2022

Date of order : 10.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Ashfaq s/o Fazal Kareem seeks post-arrest bail in Crime No. 468/2021, registered at P.S. Samanabad, Karachi under Section 397, 324/34, P.P.C. His earlier application for the same relief bearing No. 2349/2021 was dismissed by the learned Additional Sessions Judge- VII/MCTC-2, Karachi-Central vide order, dated 15.10.2021.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 28.08.2021 at 12:40 p.m., three accused persons came on two motor-cycles at "Hina Optics" the shop of complainant Muhammad Faisal s/o Muhammad Shafi situated in Samanabad Bazar, out of them two accused persons on the strength of deadly weapons, robbed two mobile phones of complainant's son and then they attempted to run away. The complainant and other persons caught hold one accused (*the present applicant*), on that the other accused persons made fires to get him released and ran away.

3. The learned counsel for the applicant mainly contends that the applicant is innocent and has falsely been implicated in this case by the police; that none of the persons present in the shop sustained any firearm injury which fact alone is sufficient to prove that the incident has not taken place in a manner narrated in the F.I.R.; that nothing has been recovered from the possession of the applicant

and the alleged recovery of pistol has been foisted upon him by the police; that section 324, P.P.C. is not applicable on present applicant whose guilt requires further enquiry, entitling him for the concession of bail.

4. On the other hand, learned Addl. P.G. vehemently opposes this application on the ground that the applicant was arrested on the spot; hence, he is not entitled for the concession of bail.

5. I have considered the arguments advanced by the learned counsel for the parties and also perused the material available on record.

6. It appears from the perusal of the record that three accused persons having entered into the shop of complainant, duly armed with deadly weapons, robbed two mobile phones. Present applicant was apprehended by the complainant and others persons, while other two accused person made their escape good making firing. Meanwhile, a police party busy on patrolling in the area reached the spot; took the custody of applicant; recovered an un-licensed pistol from his possession; collected two empties from the spot and seized the motorcycle of the applicant.

7. The offence under Section 324, P.P.C. is non-bailable and carries punishment with imprisonment for ten years; as such, the same falls within prohibitory clause of section 497, Cr. P. C., however, it may not attract to present applicant while, offence under section 397, P.P.C is non-bailable. In non-bailable offence grant of bail is not the right of an accused but a concession. The alleged offence under section 397, P.P.C. carries punishment with rigorous imprisonment not less than seven years and fine; as such, prohibition of section 497, Cr.P.C. does not attract but considering the fact that the offences like robbery/dacoity are frequently reported to have been committed without any restriction in urban and rural areas; not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of

insecurity amongst public at large. From the tentative assessment of the evidence on record, it appears that the prosecution has sufficient evidence against the applicant to connect him with the commission of alleged offence; hence, he is not entitled to concession of bail, so far the merit of the case is concerned.

8. For the forgoing facts and reasons, I dismiss this criminal bail application. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai