

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 2301 of 2021

Applicant : Muhammad Ramzan @ Ramzoo
s/o Muhammad Rahim Unar, through
Mr. Muhammad Ahmed Laghari, advocate

Respondent : The State, through Mr. Fahim Hussain
Panhwar, D.P.G., alongwith ASI Naseem Khan
of P.S. Shah Latif Town

Date of hearing : 22.02.2022
Date of order : 22.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant/accused Muhammad Ramzan @ Ramzoo s/o Muhammad Rahim Unar through instant criminal bail application seeks post-arrest bail in Crime No. 1209/2021, registered at P.S. Shah Latif Town, Karachi under sections 397, 392, 34, P.P.C. His earlier application for the same relief bearing No. 3829/2021 was heard and dismissed by the Court of IV-Additional Sessions Judge Malir, Karachi, vide order dated 28.09.2021.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. lodged on 06.07.2021 is that on 02.07.2021 at 1600 hrs., two unknown accsued persons, riding on two motorcycles, duly armed with deadly weapon, robbed Rs. 80,000/- and mobile phone from complainant Muhammad Rizwan and mobile phone from his brother, namely, Raza Rehman at battery shop of complainant, namely, M. Raza Service, situated in Sector 20-D, Shah Latif Town, Malir, Karachi and ran away.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the I.O, as he refused to pay him bribe; that the F.I.R. is delayed by four days and for that the complainant has failed to furnish any plausible explanation; that the offence under Section 397, P.P.C. does not fall within the prohibitory clause of section

497, Cr.P.C., while offence under Section 392, P.P.C. carries lesser punishment of three years; that the applicant has been arrested in the instant case on the basis of his confession made in police custody which has no evidentiary value as the same is inadmissible under Article 39 of the Qanun-e-Shahadat Order, 1984; that the complainant was called by the I.O at police station where he saw the applicant before holding of identification parade; hence, the identification test conducted by the Judicial Magistrate has lost its significance; that nothing has been recovered by the police from the possession of the applicant at the time of his arrest; that the guilt against the applicant requires further inquiry entitling him for bail. In support of his contentions, learned counsel has relied upon the cases reported as 2020 P Cr. LJ Note 88, 2018 YLR Note 82, 2014 MLD 1317, 2009 MLD 1047, 2007 MLD 242, 2007 YLR 1144, 2006 P Cr. LJ 1033 and 2004 P Cr. LJ 1431,

4. On the other hand, learned D.P.G. vehemently opposes this application on the grounds that the applicant, who is involved in nine cases of similar nature, after his arrest has been identified by the complainant and eye-witness in identification parade.

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 after lodging of the instant F.I.R., the applicant was arrested on 26.07.2021 in Crime No. 635 of 2020, registered under section 397/34, P.P.C. at P.S. Sukhan, who during interrogation disclosed about committing robbery of alleged articles from complainant and his brother by him alongwith one Muhammad Ilyas alias Sono. Thereafter, on 28.07.2021, the complainant and eye-witness identified the applicant as their accused in identification parade conducted by Judicial Magistrate-XII Malir, Karachi.

7. Applicant's claim with regard to his false implication and calling of the complainant by the I.O at police station to see him before holding of identification parade are the issues that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law. The F.I.R. has been lodged against the un-known accused persons without any motivation or ill will; as such, delay in lodging of F.I.R. is *ipso facto* no ground for the grant of bail. There is no cavil to the proposition that the confession by an accused while he is in custody of a police-officer shall not to be proved against him; however, in the instant case applicant has been arrested on being identified by the complainant and eye-witness in identification parade.

8. It is an admitted position that the applicant is involved in as many as nine cases of identical nature. No doubt, offence under Section 397, P.P.C. being carrying punishment with imprisonment for not less than seven (07) years does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under Section 392, P.P.C. carries punishment for imprisonment for a term which shall not be less than three years and more than ten years. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right. It may be observed 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.

9. 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; therefore, he is not entitled to concession of bail. The case-law cited by the learned counsel for the applicant being on

distinguishable facts, does not advance the case of the applicant for the grant of bail; hence, I dismiss this criminal bail application.

10. 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