

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 1482 of 2020

Applicant: Muhammad Afzal son of Abdul Majeed.
 Through Khawaja Muhammad Azeem Adv.

Respondent: The State, through Ms. Rahat Ahsan
 Additional Prosecutor General Sindh.

Criminal Bail Application No. 08 of 2021

Applicant: Muhammad Qasim @ Pappi Sonara son of
 Maqsood Ahmed .
 Through Mr. Mutawali Khan, Advocate.

Respondent: The State, through Ms. Rahat Ahsan
 Additional Prosecutor General Sindh.

Criminal Bail Application No. 47 of 2021

Applicant: Syed Junaid Baig @ Kaka son of Rashid Baig.
 Through Mr. Mumtaz Ali Khan Deshmukh, Advocate.

Respondent: The State, through Ms. Rahat Ahsan
 Additional Prosecutor General Sindh.

Date of hearing: 13.04.2021
 Date of order: 13.04.2021

Arshad Hussain Khan, J:- This common order will dispose of above listed criminal bail applications as the same have arisen out of F.I.R. No. 411 of 2020, registered at PS Defence, Karachi, under Section 392/34 R/W 395/412/413/201/202 P.P.C.

2. Through criminal bail application No. 1482 of 2020, the applicants/accused namely; Muhammad Afzal son of Abdul Majeed seeks pre-arrest bail, while through criminal bail applications No. 08/2021 and 47 of 2021, the applicant/accused Muhammad Qasim @ Pappi Sonara son of Maqsood Ahmed and Syed Junaid Baig @ Kaka son of Rashid Baig respectively, seek post-arrest bail in the aforementioned crimes. Their earlier applications were dismissed by learned IInd Additional District & Sessions Judge, Karachi South.

3. Briefly stated, the facts of the case as per the aforesaid F.I.Rs. are that on 13.06.2020 the complainant-Muhammad Ashraf son of Abdul Aziz, while he was at his work place, received call from his house that incident has taken place. He immediately reached at his house where he saw that articles were scattered. Then, he called 15 *Madadgar* and the area police reached there. On inquiry from the family members, he came to know that about 01.00 p.m. three unknown persons entered into his house and on force of weapons committed robbery and took away cash of Rs.4,50,000/- wrist watches, three cell phones and gold ornaments and after committing robbery they sped away.

4. Learned counsel for the applicants/accused have argued that the applicants/accused are innocent and have falsely been implicated in the case with malafide intentions and to achieve ulterior motives, whereas. they have nothing to do with the alleged crime. Further argued that nothing incriminating has been recovered from the possession of applicants/accused, which could connect them with the alleged offence and there is no specific role against the applicants/accused. Further contended that neither the names of the applicants/accused nor any description have been mentioned in the FIR. Further argued that the present applicants/accused have been involved in the case on the extra judicial confession statement of co-accused, therefore, any confession of accused or co-accused made before the police under Article 38/39 of the Qanoon-e-Shahadat, Order, 1984, is not admissible against them until and unless the same is recorded u/s 164 Cr.P.C. before a Judicial Magistrate. It is also argued that there is no identification parade held before the Judicial Magistrate in respect of applicants namely Muhammad Qasim and Muhammad Afzal. It is also argued that the applicants/accused are not hardened, desperate or habitual offender; there is no sufficient reason to believe that the accused are guilty of the alleged offence, therefore, the case of the applicants/accused require further inquiry. It is also argued that the alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. and in such like cases grant of bail is a rule and rejection is an exception. Lastly argued that co-accused namely; Waqas has already been granted bail, therefore, keeping in view the rule of consistency the applicants/accused are also entitled for concession of bail.

5. Learned Addl.P.G. for the State while opposing the bail applications has contended that though the names of the applicants/accused have not been mentioned in the F.I.R. but their names are mentioned in the challan as during course of the investigation they were implicated by the co-accused and after conducting thorough enquiry the investigating officer had collected material against them and as such they are not entitled to the concession of the bail.

6. From the record, it appears that pursuant to the notice though the complainant appeared before this Court on 22.03.2021, however, he made a statement before the Court that he will rely on the Additional Prosecutor General Sindh.

7. I have considered the arguments advanced by learned counsel for the applicants/accused and learned Addl. PG as well as perused the material available on the record.

8. From perusal of the FIR, it appears that it has been lodged against the unknown accused persons who committed dacoity in the house of the complainant and took away cash, gold ornaments wrist watches and mobile phones on the force of weapon, however, there is no description of the accused persons mentioned in the FIR. Record does not show that any implicating material evidence has been recovered from the applicants/accused. From the record, it transpires that the names of the applicants/accused were not mentioned in the first challan, however, their names have been included in the second challan that too upon the statement of co-accused recorded under section 161 Cr.P.C. The Hon'ble Supreme Court in the case *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of statement of co-accused made before the police in light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements of co-accused recorded by police during investigation are inadmissible in the evidence and cannot be relied upon.

Similar view has been reiterated by the apex Court in case of *Raja Muhammad Younas v. The State* [2013 SCMR 669], wherein it has been held as under:

“2.After hearing the counsel for the parties and going through the record, we have noted that the only material implicating the petitioner is the statement of co-accused Amjad Mahmood, Constable. Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused.....”

It would not be out of place to mention here that evidence of an accomplice is ordinarily regarded suspicious, therefore, extent and level of corroboration has to be assessed keeping in view the peculiar facts and surrounding circumstances of the case.

9. In the present case, no test-identification parade has been held in so far as the applicants/accused namely; Muhammad Afzal and Muhammad Qasim are concerned despite the fact that the complainant mentioned in the FIR that the inmates of his house can identify the accused if brought before them. It is well settled that in cases where the names of culprits are not mentioned, holding of test-identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State* [1997 SCMR 971], wherein the Honourable Supreme Court of Pakistan, inter alia, has held_

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits.....”

Insofar as the test-identification parade of applicant/accused Syed Junaid Baig is concerned the same was done after a delay of six days, however, no plausible explanation for such delay are available on the record. It is also settled that that delay in holding identification parade not explained, such identification parade ruled out of consideration. Reliance can be placed on the case of *Mohammad Amir alias Mushki and 3 others v. the State* [PLD 1977 Kar. 695].

10. The record shows that the applicants/accused are not previous convict nor hardened criminal. Moreover, the applicants/accused Syed Junaid Baig and Muhammad Qasim @ Pappa Sonara have been in continuous custody since their arrest and are no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping them behind the bars for an indefinite period pending determination of his guilt. It is well settled

that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offence. From the tentative assessment of the evidence in the hand of prosecution, it appears that there is hearsay evidence against the present applicants/accused, while it is yet to be determined if they are involved or not, which is possible only after recording of the evidence by the trial Court.

11. In view of the peculiar facts and circumstances of the case, I am of the opinion that prima facie, the applicants/accused have succeeded to bring their cases within the purview of further inquiry and as such are entitled to bail and for this reason, the applicants/accused namely; Muhammad Qasim & Pappi Sonara and Syed Junaid Baig & Kaka were admitted to bail subject to their furnishing solvent surety in the sum of Rs.2,00,000/- each and P.R. Bond in the like amount to the satisfaction of the trial Court, while the interim pre-arrest bail granted to the applicant/accused Muhammad Afzal, vide order dated 29.09.2020, was confirmed on the same terms and conditions by my short order dated 06.4.2021.

12. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicants/accused misuses the bail, then the trial Court would be competent to cancel the bail of the applicants/accused without making any reference to this Court.

Above are the reasons of my short order dated 13.04.2021

Judge

*Tahir****