

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**

Cr. Bail Applications No. 544 & 545 of 2021

**Cr. Bail Application No. 544 of 2021**

Applicant: Sadaqat Ali son of Razaqat Ali.  
 Through Mr. Muhammad Sharif Buriro, Advocate.

Complainant: Through Shaukat Iqbal, Advocate

State: Syed Meeral Shah,  
 Additional Prosecutor General Sindh.

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**Cr. Bail Application No. 545 of 2021**

Applicant: Kashif son of Bashir.  
 Through Mr. Muhammad Daud Narejo, Advocate.

Complainant: Through Shaukat Iqbal, Advocate

State: Syed Meeral Shah,  
 Additional Prosecutor General Sindh.

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Date of hearing: 29.04.2021  
 Date of order: 29.04.2021

**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.139/2021 registered under Section 379 PPC at P.S. Taimoria. The applicants/accused through above bail applications have sought post-arrest bail in the case registered under the above said F.I.R.

2. Briefly stated the facts of the F.I.R. are that the complainant is a Deputy Manager in K-Electric, North Nazimabad, Karachi. On 01.3.2021, during shutdown, he was on duty along with his subordinate staff when around 1540 hours, he reached at street No.6, Block-I, North Nazimabad, he saw three persons riding on a vehicle (FAW) bearing registration KY-2130, were cutting the wire of KE. They were stopped by his staff. Upon search eight kilogram copper wire and three kilogram aluminum wire, alongwith gutter were found from their vehicle. On inquiry, they disclosed their names as Shahzeb son of Zainuddin, Sadaqat Ai son of Razaqat Ali and Kashif son of Basheer. Complainant subsequently called on 15 and got apprehended the culprits along with KE stolen wires and FIR was lodged.

3. 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 ulterior motives. He has further argued that the applicants/accused have got no concern with the alleged offence and there is no authentic evidence/proof against the applicants/accused, hence the matter requires further inquiry. Further contended that the complainant is not an eye-witness of the incident and he was informed by his subordinate staff about the incident. He argued that there is clear violation of Section 103 Cr.P.C. as the place of incident is a thickly populated area, therefore, the case of the applicants/accused is highly doubtful. He, therefore, submitted that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. He lastly prayed that the applicants/accused is entitled for concession of bail. Learned counsel, in support of his stance in the case, has placed reliance on the cases of Qamar Ali Shah v. The State [2015 MLD 321], Muhammad Tanveer v. The State and another [PLD 2017 SC 733], Muhammad Ramzan alias Jani v. The State and others [2020 SCMR 717], Tariq Bashir and 5 others v. The State [PLD 1995 SC 34] and Shabbir and 3 others v. The State [2003 MLD 1528].

4. Learned counsel for the complainant as well as Addl.P.G. for the State have vehemently opposed the bail applications on the ground that the applicants/accused along with others were apprehended on the spot along with stolen material, FIR was promptly lodged and the name of accused persons are appearing. Further contended that although the offence does not fall within the prohibitory clause yet the crime is heinous affecting the society at large and as such applicants/accused are not entitled for concession of bail. Learned counsel for the complainant in support of his arguments has placed reliance on the case of Muhammad Ghafoor v. The State Karachi [2008 YLR 2275].

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

6. From perusal of the FIR, it appears that although the names of the accused persons are appearing in the FIR yet there appears no specific role assigned to them. Further the FIR is also silent as to how the complainant came to know the exact weight of the stolen material as well as its quality whether it is copper/aluminum wires. Learned counsel for the complainant as well as Addl. PG. have also failed to satisfy this Court on this point. Such facts bring the case of the applicants/accused within the purview of further inquiry.

7. The record shows that the applicants/accused are not previous convict or hardened criminal. Moreover, the applicants/accused 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. Truth or otherwise will be determined only after recording of the evidence by the trial court. It may be observed that the offence alleged against the applicants/accused falls outside the prohibitory clause of Section 497, Cr.P.C. in such like case grant of bail is a rule and refusal is an exception. Reliance is placed on the case of Tariq Bashir and 5 others v. The State [PLD 1995 SC 34].

The Honourable Supreme Court of Pakistan in the case of *Mohammed Tanveer v. the state* [PLD 2017 Supreme Court 733] while dilating upon the issue of bail in non bailable offences falling outside the prohibitory clause of Section 497 Cr.P.C. inter alia, has held as under:

6. We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the courts of the Country where law points require interpretation.

7. The Supreme Court regulating the grant or refusal of bail has since long laid down binding and guiding principles however, the principle in two cases, out of many are directly attracted to the present case, are mentioned herein once again. In the case of Mansha Khan v. The State (1977 SCMR 449) it was held as follows:-

"---S.497 Cr.P.C. read with section 325/34, P.P.C.--- Grievous hurt---Bail---Offence under S. 325, P.P.C. (repealed) being punishable with 7 years' R.I. is not one of such offences where bail is to be refused by reason of prohibition . contained in section 497, Cr.P.C.---Held, bail in such cases, hence, not to be refused merely because of offence being non-bailable---Any strong reason being absent to refuse bail, Courts below, held, not properly exercised their discretion in refusing bail on basis of number of injuries suffered by victim of attack."

8. In the case of Tariq Bashir v. The State (PLD 995 SC 34) this Court has taken notice of stock of prevailing circumstances where under-trial prisoners are sent to judicial lock-up without releasing them on bail in non-bailable offences punishable with imprisonment of less than 10 years. It was held that "bail in such offences shall not be refused." This Court took further pains by reproducing the entire provision of section 497, Cr.P.C. and further held that "grant of bail in such offences is a rule and refusal shall be an exception, for which cogent and convincing reasons should be recorded." While elaborating exceptions, albeit it was mentioned by this Court that if there is a danger of the offence being repeated if the accused is released on bail, then grant of bail may be refused like the two Courts below in this case have held but it was further elaborated that such opinion of the Court shall not be founded on mere apprehension and self-assumed factors but the same must be supported by cogent reasons and material available on record and not to be based on surmises and artificial or weak premise.

9. Even otherwise to ensure that the accused may not repeat the same offence, if released on bail, sufficient surety bonds shall be obtained through reliable sureties besides the legal position that repetition of the same offence would disentitle the accused to stay at large as bail granting order may be recalled in that event, therefore, such a ground should not be an absolute bar in the way of grant of bail.

10. There is a sky high difference between jail life and free life. If the accused person is ultimately acquitted in such cases then, no kind of compensation would be sufficient enough to repair the wrong caused to him due to his incarceration.

11. It is settled principle of law that once the Legislature has conferred discretion on the Court to exercise jurisdiction in particular category of offences without placing any prohibition on such discretion then, the Court shall not import to the provision of law, reasons or factors alien thereto and not specifically mentioned in the Statute.

12. ....

13. Once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then, the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all

Courts throughout the country including the Special Tribunals and Special Courts.

8. In view of the peculiar facts and circumstances of the case, as well as the dictum laid down by the Honourable Supreme Court of Pakistan, 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 were admitted to bail subject to their furnishing solvent surety in the sum of Rs.1,00,000/- each and P.R. Bond in the like amount to the satisfaction of the trial Court, by my short order dated 29.4.2021.

9. 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 misuse the bail, then the trial court would be competent to cancel their bail without making any reference to this Court.

Above are the reasons of my short order dated 29.04.2021.

Judge

*Tahir\*\*\**