

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

**Cr. Bail Application No. 429 of 2021**

Applicant: Haseem Khan son of Ghulam Abbas.  
Through Mr. Qamar Hussain, Advocate.

Respondent: The State, through Ms. Amna Ansari,  
Additional Prosecutor General Sindh.

Date of hearing: 04.05.2021

Date of order: 04.05.2021

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**Arshad Hussain Khan, J:-** The applicant/accused seeks post-arrest bail in F.I.R. No. 326 of 2021, registered at PS Federal B-Industrial Area, Karachi Central, under Sections 392/397/34 P.P.C.

2. Briefly stated the facts of the F.I.R. are that on 27.11.2020, the complainant along with his friend Muhammad Umair son of Raheel rided on motorcycle while going to home at about 2030 hours when he reached at *Lyari Naddi Pul*, main Shahrah-e-Pakistan, Block No.21, F.B. Area, Karachi, suddenly two persons rided on one motorcycle, seems to be Pathan, came from behind of the complainant and at the gunpoint snatched mobile phone, cash, ATM Cards, CNIC copy from the complainant and his friend. However, when culprits were fleeing, the complainant made hue and cry upon which one police mobile, patrolling in the area reached there, he told entire story to the patrolling police. Thereafter, the complainant along with police party chased the accused persons and apprehended them by the police. On inquiry, the accused persons disclosed their names as Jaheem Khan son of Ghulam Abbas and Fahimullah and from their personal search one 32 bore revolver of black colour with loaded two rounds, snatched mobile phones, cash, ATM Cards, CNIC copy were recovered from the accused Jaheem Khan whereas from Faheemullah one revolver 32 bore along with 03 rounds alive rub number was recovered from his possession. They failed to produce licenses of recovered weapons, hence the subject FIR.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has been falsely implicated by the complainant with the collusion of police due to malafide intention and

ulterior motive. Further argued that the co-accused Fahimullah son of Mithari has already granted bail by the XIth Judicial Magistrate, Karachi [Central] as such the present applicant/accused is also entitled to grant bail as a rule of consistency. Next argued that learned II-Additional Sessions Judge, Karachi [Central] dismissed the bail application without applying the judicial mind, there is no proper reason to dismiss the bail of the applicant/accused who is a Juvenile and his case fall in the Juvenile Justice System and the accused has not committed any offence whatsoever. He has further argued that as per contents of the FIR, the accused persons also robbed the friend of the complainant but there is neither any statement of his friend nor his name has been cited as a witness, therefore, the whole story is false and the accused is entitled to the grant of bail. He has further contended that no specific role has been assigned to the applicant/accused which creates doubt and goes in favour of accused/applicant. Learned counsel also contended that as per the contents of the FIR, neither any weapon was used during the said alleged offence nor any bullet was fired during the said whole alleged offence, so Section 397 PPC is not attracted. All the *mashirs* are interested persons / police persons while the occurrence is day light occurrence but there is no private witness, hence the case of the applicant/accused requires further inquiry. He has lastly prayed that the applicant/accused may be admitted to bail.

4. Learned Additional Prosecutor General for the State vehemently opposed the bail application on the grounds that the applicant/accused has been arrested at the spot, recovery has also been affected from his possession, therefore, role of the applicant/accused is very much clear in the commission of offence. She has lastly prayed for dismissal of the bail application. Notice of this bail application has also been issued to the complainant but there is no representation on his behalf.

5. I have considered the arguments advanced by learned counsel for the applicant/accused and learned Additional Prosecutor General as well as perused the material available on the record.

6. The record shows that the applicant/accused is not previous convict nor a hardened criminal. Besides, co-accused namely;

Faheemullah has been granted post-arrest bail by the trial court. It is to be noted that in criminal cases rule of consistency applies when the accused has identical role with the co-accused then he is also entitled for the same relief, which was granted to the co-accused. In the case in hand, co-accused Faheemullah, having similar role, has been granted bail by the court of XIth Judicial Magistrate, Karachi-Central, vide order dated 01.01.2021 as such the present applicant/accused is also entitled for the same treatment as per rule of consistency. Reliance can be placed on the case titled as *Pir Bakhsh v. The State and others* [2010 MLD 220], wherein it is held as under:-

“6. Rule of consistency is always taken into consideration by the Courts since long because a person cannot be denied for the grant of bail whose case is at par of an accused who had already been released on bail.

The Courts have to give equal treatment to the accused persons having one and the same role in the same case. Reliance upon the cases of Muhammad Fazal alias Bodi v. The State (1979 SCMR 9), Khadim Hussain v. The State (1983 SCMR 124), Manzoor Ahmad and others v. The State (PLJ 1999 Cr.C. (Lahore) 570) and Muhammad Daud and another v. The State and another (2008 SCMR 173). As the case of the petitioner is at par with that of his co-accused Zulifqar and Ghulam Rasool who had already been allowed bail by the learned Additional Sessions Judge, therefore, following the rule of consistency, the petitioner is also entitled to the bail.”

7. Moreover, the applicant/accused has been in continuous custody since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending determination of his guilt. It is well settled law that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offence. This case does not fall within the prohibitory clause thus keeping in view the law laid down in the case of *Zafar Iqbal v. Muhammad Anwar and others* (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of grant of bail must favorably be considered and should only be declined in exceptional cases. In the instant case, no exception has been pointed out by the prosecution specially in the circumstances when applicant/ accused is first offender and nothing contrary to the

same has been produced, thus I do not find this to be a case where bail should be refused as an exception and for this reason, the applicants/accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial court by my short order dated 04.5.2021.

8. 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 applicant/accused misuses the bail then the trial court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 04.05.2021

Judge

*Tahir\*\*\**