

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,  
LARKANA.**

*Crl. Bail Appln. No. S- 150 of 2021.*

Applicant: Ali Murad son of Kehar Katohar, through Messrs Amanullah Luhur Baloch and Zafar Ali Malghani, Advocates.

The State: Through, Mr. Muhammad Noonari, DPG.

Date of hearing: 30.07.2021.

Date of order: 02.08.2021.

**ORDER**

**Adnan-ul-Karim Memon, J:-** Basically, impugned herein is the order dated 04.03.2021 whereby post-arrest bail was refused to the applicant by the learned Sessions Judge, Jacobabad, in F.I.R No.01 of 2021, registered with Police Station Punhoo Bhatti, for offenses punishable under sections 392, 506(2), 504, 114, 147, 148 & 149 P.P.C. However section 395 P.P.C has been inserted by the prosecution in the report under section 170 Cr.P.C. The applicant is now seeking his admission on post-arrest bail in the aforesaid crime.

2. The accusation against the applicant as outlined in the F.I.R is that on 15.12.2020, the complainant proceeded to sell, his Paddy crop i.e. Rice (airy-6) by loading the same in Tractor- Trolley i.e. Messy Ferguson Model 2019, however, he was interrupted, on the way to market, by the applicant and his accomplices and snatched away his crop by force, thus committed an offense under section 392/395 PPC. The applicant was arrested by the police in the said F.I.R. He being aggrieved by and dissatisfied with his unjustified arrest preferred post-arrest bail before the learned Sessions Judge, Jacobabad by filing Criminal Bail Application No.147/2021, which was later on dismissed vide order dated 04.03.2021 on the premise that the applicant along with accomplices committed robbery/ dacoity, which offense falls within prohibition contained in Section 497(1) Cr.P.C. The applicant has now approached this Court for his admission on post-arrest bail.

3. Messrs Amanullah Luhur Baloch and Zafar Ali Malghani, learned counsel for the applicant, have mainly contended that there is a delay of 36 days in lodging of FIR without plausible explanation; that no specific role has been assigned to the applicant; that there is no independent eyewitness of the alleged crime; that sections 392/395 are not attracted in the present case; that no recovery has been effected from the applicant. They further argued that the punishment provided under section 392 PPC is a minimum of 03 years and a maximum of 10 years; therefore, the same also does not fall within the prohibitory clause of section 497(1) Cr.P.C. They prayed for allowing the instant bail application.

4. The complainant of this case did not put his appearance before this Court despite service of notice; and this is the reason, Mr. Muhammad Noonari, learned Deputy Prosecutor General, has been heard, who opposed the bail

application on the premise that the applicant is nominated in the aforesaid crime. He prayed for the dismissal of the instant bail application.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. To proceed further on the subject, while deciding a bail application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C., nature and gravity of the charge, other incriminating material against the accused, legal pleas raised by the accused, and relevant laws have to be considered. In this regard, I am fortified by the decision of the Honorable Supreme Court rendered in the case of Shahzad Ahmed Vs. The State (2010 SCMR 1221).

7. Tentative assessment of the record reflects the following position of the case:-

*The alleged offense was committed on 15.12.2020, whereas the F.I.R was lodged on 21.01.2021; after 36 days.*

*Prima facie, the applicant was arrested on 06.2.2021, and there is no recovery of alleged robbed property from the applicant.*

*Mashirnama of the place of Wardat was prepared on 22.01.2021; after 37 days of the alleged incident.*

*The statement of PWs have been recorded on 26.01.2021; after a delay of 37 days of the alleged incident.*

*Prima facie, the alleged incident of robbery is yet to be ascertained by the learned trial court after the recording of evidence.*

*The alleged Tractor-Trolley has also not been recovered and or placed on record.*

*The alleged blue color Jeep used in the crime as narrated by the complainant, has not been recovered.*

8. In view of hereinabove, I am convinced that in the instant case there are sufficient grounds for further inquiry, and the case of the applicant-accused is covered under section 497(2) Cr. P.C.

9. For the above reasons, the applicant Ali Murad has made out a case for post-arrest bail in FIR No. 01 of 2021, registered with Police Station Punhoo Bhatti, for offenses punishable under sections 392/395, 506(2), 504, 114, 147, 148 & 149 P.P.C. Accordingly, the applicant is admitted to post arrest bail; he shall be released bail in the aforesaid crime subject to furnishing his bail bond in the sum of Rs.100,000/- (*One Hundred Thousand Rupees*) and P.R Bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to mention here that, observations made in this order are tentative in nature, and shall not affect the merits of the case.

## Judge

Ansari

8. Prima facie, the available record shows that the applicant has been nominated by the complainant on the accusation that he on a fateful day was seen alighting from a Blue color Jeep along with his accomplices, and snatched

his crop by force along with Tractor-Trolley. Prima-facie this was daylight incident and the complainant could have easily reported to Police in time but waited for 36 days to lodge F.I.R of the incident, for which he has to account for in the trial. Even the applicant has been shown arrested on 06.2.2021, however, no recovery of alleged robbed property/ Blue color Jeep could be effected from the applicant; Mashirnama of the place of Wardat was prepared on 22.01.2021 after 37 days of the alleged incident; the statement of PWs recorded on 26.01.2021 after a delay of 37 days of the alleged incident; Prima facie, the ingredient of alleged robbery is yet to be proved in the trial; and, even alleged Blue color Jeep and Tractor-Trolley has not been recovered/or placed on record to substantiate the allegations.