

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No. S – 74 of 2013

Date of hearing : 20.02.2013.

Applicant : Muhammad Ilyas Aboo through
Mr. Liaquat Ali Malak, Advocate.

Respondent : The State through
Mr. Shahzado Saleem Nahyoon, A.P.G.

ORDER

NADEEM AKHTAR, J.- This is an Application under Section 497 Cr.P.C., whereby the applicant / accused has prayed that he may be admitted to bail pending trial in Crime No.107/2012 under Sections 392, 34 P.P.C. registered at Police Station Tando Ghulam Haider.

2. Briefly stated, the facts of the case are that an FIR was lodged on 06.11.2012 at 08:00 p.m. by one Ali Ahmed S/O Long Mallah (**the complainant**) with the Police Station Tando Ghulam Ali, against two persons, including the applicant. The complainant had alleged in the FIR that he went to Tarai and Golarchi on 17.09.2012 for business purposes ; when he was returning to his village Mazarpur through Dando road and reached at the *Mori* (bridge) of the said road, two men suddenly intercepted him with pistols in their hands ; both the said men took away from him Rs.45,000.00 and one Chinese mobile phone, and threatened him of dire consequences ; after robbing the complainant, both the men proceeded towards the Eastern side of Katcha ; the said men were identified by the complainant, one of them was the applicant and the other was one Lakha Dino Mallah, both residents of village Dando, Taluka Tando Ghulam Haider ; and the complainant informed Fakeer Muhammad and Muhammad Siddique about the incident.

3. The alleged incident took place on 17.09.2012 and the FIR was lodged on 06.11.2012. The applicant was arrested on 08.11.2012, when nothing was recovered from him. After completion of investigation by the police, the challan was submitted before the trial court. It was alleged by the prosecution that the complainant led the Investigation Officer on 11.11.2012 to Dokia Mori, and took out one *theli* (bag) which was found buried in the sand. It was further alleged that Rs.5,000.00 and one Chinese mobile phone were recovered from the said *theli*. It was also alleged that the applicant had informed the Investigation

Officer that the recovered amount and mobile phone were part of the property robbed from the complainant. The applicant filed a Bail Application before the Judicial Magistrate-II, Tando Muhammad Khan, which was dismissed on 20.11.2012. Thereafter, the applicant filed a Bail Application before the Sessions Judge, Tando Muhammad Khan, which was also dismissed on 11.12.2012.

4. The learned counsel for the applicant submitted that there was a long delay of about 50 days in lodging the F.I.R. by the complainant, and that the allegations against the applicant and the alleged recovery from him, were false and concocted. He further submitted that the place of the alleged recovery is far away from the place of the alleged incident as well as from the village of the applicant. He contended that, before lodging the FIR, the complainant had filed an application against the applicant and the co-accused under Sections 22-A and 22-B Cr.P.C. before the Sessions Judge Tando Muhammad Khan, the contents whereof were contradictory to the allegations made in the FIR. It was further contended that there was / is an old enmity between the parties, and the FIR was lodged by the complainant as a counter blast to a direct complaint filed by the applicant before the Judicial Magistrate-I, Matli, against the complainant and five other persons, much prior to the lodging of the FIR by the complainant. It was argued by the learned counsel that the Bail Applications filed by the applicant have been wrongly dismissed by both the courts below without appreciating the facts and evidence on record.

5. It is an admitted position that the FIR was lodged by the complainant after a delay of about 50 days from the date of the alleged incident. The said delay is material for the purposes of deciding this bail application. In Mehmood Ahmed and 3 others V/S The State and another, 1995 SCMR 127, it was held *inter alia* by the learned Full Bench of the Hon'ble Supreme Court that the delay of two (02) hours in lodging the FIR in the particular circumstances of the case had assumed great significance, as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate.

6. The record shows that, prior to the lodging of the FIR on 06.11.2012 by the complainant, the applicant filed a direct complaint on

27.09.2012 before the Judicial Magistrate-I, Matli, against the complainant and five other persons. Therefore, the possibility of enmity between the parties cannot be ruled out. The record further shows that, in his application against the applicant and the co-accused under Sections 22-A and 22-B Cr.P.C. before the Sessions Judge Tando Muhammad Khan, the complainant had alleged that the incident took place at about 10:00 p.m. on 17.09.2012, and that the two persons seen by him at the place of the incident were armed with "deadly weapons". No description of the "deadly weapons" was given by the complainant in his said application. Whereas in the FIR, no specific time of occurrence of the alleged incident was mentioned, and it was alleged that the accused were armed with pistols.

7. In his FIR, no details whatsoever, such as the make, model, colour, serial number or number of the SIM, of the mobile phone were disclosed by the complainant. If the complainant was in possession of a mobile phone at the time of the incident, he must have been aware of the above particulars. When the mobile phone was allegedly recovered, the same could have been identified immediately on the basis of the said particulars. The prosecution also did not disclose any of the said particulars in the challan. Similarly, the complainant did not mention anything in his FIR about the denomination of the currency notes he was carrying, but the prosecution has claimed that a sum of Rs.5,000.00 was recovered in the denomination of Rs.500.00 currency notes. Admittedly, nothing was recovered from the applicant when he was arrested on 08.11.2012.

8. Admittedly, the incident took place at 10:00 p.m. The FIR is silent as to whether the accused were identified by the complainant in the moon light, street light or with the help of a flash light. It was alleged by the complainant in the FIR that both the accused were armed with pistols, both of them pointed their pistols at him, and he was robbed by both of them. There was no specific allegation against the applicant that the alleged crime was committed by the applicant alone. The role assigned to the applicant in the FIR, therefore, *prima facie* does not appear to be specific in nature. Moreover, there was / were admittedly no eye witness(es) of the incident, although the place of incident was a common thorough-fare.

9. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, in my humble opinion this is a case which requires further inquiry. I do not wish to comment on the guilt or innocence of the applicant, as it would depend on the strength and quality of the evidence produced by the prosecution and the defense at the time of the trial. However, I am convinced that the applicant is entitled to be released on bail. These are the reasons for the short order announced by me on 20.02.2013, whereby the applicant was granted bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. Bond in the like amount to the satisfaction of the trial court.

It is hereby clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and that the trial court shall proceed to decide the case strictly in accordance with law.

J U D G E