

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1676 of 2020

Date Order with signature of Judge

For hearing of bail application:

10th March, 2021

Mr. Moula Bux Bhutto, Advocate for applicant.
Mr. Riyasat Ali, District Public Prosecutor.

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Omar Sial, J: Wajid alias Mama has sought post arrest bail in crime number 188 of 2016 registered under sections 395 and 337-A(i) P.P.C. at the Eidgah police station. Earlier, his application seeking bail was dismissed on 13-10-2020 by the learned Additional District and Sessions Judge, Karachi South.

2. A background to the case is that Muhammad Usman lodged the aforementioned F.I.R. on 18-10-2016 recording therein that he is the branch manager of a local bank. He recorded therein that while he was on duty 3 young boys came to the bank and were followed by 2 other boys. They pushed their way past the security guard at the door and then whipped out pistols. Another security guard who tried to intervene was hit on the head with a pistol butt. They then beat the two cashiers and took Rs. 540,000. They also took the mobile phone of a lady employee.

3. I have heard the learned counsel for the applicant as well as the learned DPP. The complainant did not effect an appearance despite notice. My observations are as follows.

4. It appears from the record that the applicant was arrested in another case (F.I.R. No. 127 of 2017 registered on 10-5-2017) and re-arrested in this case on 30-5-2017 i.e. 7 months after the incident as he allegedly confessed before the investigating officer of F.I.R. No. 127 of 2017 that he had also committed the present offence. He was identified in an identification parade on 6-6-2017 by the complainant.

5. The investigating officer has been unable to reason as to why the two security guards, the two cashiers and the lady employee (all of whom are named in the F.I.R.) were not even asked to come and identify the applicant. While the fear element may be there for the two private employees, upon a tentative assessment there appears to be little reason for the security guards to not identify. No recovery has been effected from the applicant. The identification parade was held after 8 months of the incident and prima facie the accuracy of the complainant in identifying all the accused must be determined after evidence is led at trial. The fact that the applicant has been in custody for nearly 4 years without the trial being concluded and the delay is not attributed to him, also tilts the balance for grant of bail in his favour in accordance with the third proviso of section 497 Cr.P.C. Though cases have been registered against the applicant in the past, the learned DPP confirms that none of them have led to a conviction; either he has been acquitted in those cases or he is on bail. In view of the background of the matter and looking at the evidence in a holistic manner it appears to be a case of further inquiry.

6. Above are the reasons for the short order dated 15-2-2021.

JUDGE