

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Criminal Bail Applications No. 566 & 765 of 2022

Applicant in Cr. Bail : Fazal Rahim Qari s/o Gul Rahim, through  
Application No. 566/2022 Mr. Farrukh Sharif, advocate

Applicant in Cr. Bail : Abdul Aziz s/o Muhammad Rasheed,  
Application No. 765/2022 through Mr. Ali Akbar Abro, advocate

Respondent : The State, through Mr. Faheem Hussain  
Panhwar, D.P.G. alongwith complainant  
Muhammad Rafiq s/o Muhammad Siddiq

Date of hearing : 23.05.2022  
Date of order : 23.05.2022  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** By this common order, I intend to dispose of above listed both criminal bail applications as the same, being arisen out of F.I.R. No. 22/2022, registered at P.S. Preedy, Karachi under sections 392/397/34, P.P.C., have been heard by me together.

2. Applicants/accused Fazal Rahim Qari s/o Gul Rahim and Abdul Aziz s/o Muhammad Rasheed through listed Cr. Bail Applications, respectively, seek post-arrest bail in aforesaid crime. Earlier Cr. Bail Application of applicant Fazal Rahim Qari bearing No. 789/2022 was dismissed by the Court of Additional Sessions Judge-VI, Karachi-South vide order, dated 11.03.2022, while first Cr. Pre-Arrest Bail Application of applicant Abdul Aziz bearing No. 308/2022 was dismissed by the said Court vide order, dated 09.02.2022, whereafter he was arrested by the police, and then his second Cr. Bail Application bearing No. 514/2022 seeking post-arrest bail was dismissed by the said Court vide order, dated 22.02.2022, and then his third Cr. Bail Application filed in Sessions Case No. 885/2022 was dismissed by the said Court vide order, dated 14.04.2022.

3. It is alleged that on 10.01.2022 at 1635 hrs., at VGO Tel Mobile Sale Centre, situated on second floor, Regal Mansion, Abdullah Haroon Road, Saddar, four

unknown accused persons on the strength of firearm robbed cash amount of Rs.46,60,100/-, 23 crossed cheques of Rs.77,64,320/- and four mobile phones from employees of the company, for that aforesaid F.I.R. was lodged.

4. After hearing the learned counsel for the applicants as well as learned D.P.G and perusing the material available on record, it appears that there is no direct evidence against the applicant **Fazal Rahim Qari**, who was initially implicated in this case on the basis of confession made before police by the arrested co-accused, namely, (1) Muhammad Mehraj alias Mari (2) Muhammad Asad alias Sono and (3) Shahzeb alias Boxer. The said applicant was arrested by the police after the alleged incident on 04.02.2022 in Crime No. 54/ 2022, registered under section 23(1)(A) of Sindh Arms Act, who while in police custody confessed commission of alleged offence along with other co-accused. Prima facie, no other incriminating material is available with the prosecution to connect the said applicant with the commission of alleged offence, except, the confession of said co-accused persons before the police and the extra-judicial confession of the said applicant whilst in custody, which are inadmissible under Article 38 & 39 of the Qanun-e-Shahadat Order, 1984. It is also an admitted position that no identification test of the said applicant has been conducted to identify him, if he was one of the accused persons, who allegedly committed alleged robbery. Under the circumstances, the guilt of said applicant is yet to be proved at the trial.

5. The case of the applicant **Abdul Aziz** is; however, appears to be on different footings from the case of applicant Fazal Rahim Qari. He was arrested by the police on 09.02.2022 and subsequently, on 10.02.2022, he was identified by the eye-witnesses, namely, (1) Syed Bilal Ali (2) Simon Michel and (3) Abdul Rashid in identification test conducted by the Judicial Magistrate-VIII, Karachi-South. The said applicant has not alleged any motive against the said P.Ws for implicating him falsely in the instant case. No doubt, offence under Section 397,

P.P.C. being carrying punishment with imprisonment for not less than seven (07) years does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under Section 392, P.P.C. carries punishment for imprisonment for a term which shall not be less than three years and more than ten years. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right. It may be observed that the offences like robbery/dacoity are frequently reported to have been committed without any restriction in urban and rural areas; not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of insecurity amongst public at large. From the tentative assessment of the evidence on record, it appears that the prosecution has sufficient evidence against the said applicant to connect him with the alleged offence; therefore, he is not entitled to the concession of bail.

6. Accordingly, applicant Fazal Rahim Qari in Criminal Bail Application No. 566 of 2022 is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (*Rupees One Hundred Thousand Only*) and P.R. Bond for like amount to the satisfaction of the trial Court, while Criminal Bail Application of applicant Abdul Aziz bearing No. 765 of 2022 is dismissed.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits. In case applicant Fazal Rahim Qari misuses the concession of bail in any manner, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

Both the Cr. Bail Applications stand disposed of.

JUDGE