

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Bail Appln. No. D- 10 of 2022.

Date	Order with signature of Hon'ble Judge
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- 1.For orders on office objection as flag A.
- 2.For hearing of bail application.

27.7.2022.

Mr. Habibullah G. Ghouri, advocate for the applicant.

Mr. Ali Anwar Kandhro, Addl. P. G.

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ORDER

ADNAN-UL-KARIM MEMON-J. Through the captioned bail application, applicant Abdullah Jatoi is seeking post-arrest bail in F.I.R No.101 of 2021, registered with Police Station Ratodero, for the offenses under Sections 353, 402, 399, 395, 397, 337A (i), 337-F(i), 337 H(ii) PPC., read with section 6 and 7 of Anti-Terrorism Act, 1997.

2. Facts of the prosecution case are that on 08.7.2021 at 1245 hours complainant PC Zahid Hussain of P.S Lashari lodged FIR alleging therein that on 7.7.2021 he alongwith PC Allah Wadhayo were directed to perform their duty at Sim Picket and he was allotted G-3 rifle with 20 live rounds from Police Station. On 08.7.2021 at 0330 hours while he was available at the picket, he received an emergency call from his house hence he left for his village Panjo Lorar on his motorcycle, and at 4.00 am when he reached Kohri minor on Ratodero-Seelra link road, he saw 8 accused persons on the light of his motorcycle who were identified as Khuda Bux @Khudoo armed with K.K, Meer Hassan @Meeroo, Allahdadboth armed with pistols, Akbar @Izhar with K.K, Badoo, Amb @Faqir, Razaque @Razoo all armed with G-3 rifle and Abdullah (present applicant) armed with a pistol who overpowered the complainant by pointing their weapons. Accused Abdullah got him down from motorcycle while accused Khuda Bux attempted to rob service G-3 from complainant on which he resisted as such accused Mir Hassan Jalbani caused him pistol butt blow on his head and accused Akbar @Izhar and Allahdad Jalbani caused him butt blows on knee of his right leg, hence he fell down as such all the culprits fired in air on which cops available at Seelra Laro Picket of Police station flashed torch lights and raised hakals on which culprits fired upon them and in the meantime accused Khuda Bux @Khudo Jalbani caused K.K butt blow on face of complainant and thereby accused Khuda Bux robbed G-3 rifle from complainant while accused Abdullah robbed a purse from pocket of

complainant and then all the accused went away and then PC Saeed Ahmed Soomro and PC Abdul Ghafoor Bhutto of Seelra Picket arrived at the scene offence who also saw and identified the accused and they informed Ratodero police through mobile phone and brought the injured/complainant to P.S and after obtaining letter took him to hospital at Ratodero where he was referred to Larkana Hospital and after getting treatment he appeared at police station and lodged the FIR to the above effect.

3. After the registration of the FIR, the investigation was followed and the applicant was arrested and he was sent up to face trial before a competent Court of Law, where a post-arrest bail application was filed on his behalf but his bail plea was declined by the learned trial Court vide order dated 28.08.2021, giving rise to filing of the instant bail application.

4. Mr. Habibullah G. Ghouri, learned Counsel for the applicant, contended that the applicant is innocent and has falsely been implicated in the present case by the police with malafide and ulterior motives; that there is delay of 8 hours in lodgment of FIR for which no plausible explanation has been furnished by the complainant; that admittedly the incident occurred in odd hours of night i.e. 4.00 a.m and allegedly the applicant alongwith 7 other accused were identified on the torch light and headlight of motorcycle which is weak piece of evidence and the torch was also not produced during investigation; that applicant Abdullah is not alleged to have caused any injury to the complainant; that the alleged crime weapon i.e pistol was/is not recovered from applicant Abdullah; that in the contents of FIR there is no mention about robbing of motorcycle but in the details of robbed property motorcycle is also mentioned robbed property; that no such incident has occurred as alleged by prosecution and the present applicant has nothing to do with the alleged crime but in fact on 6.7.2021 he along with his father and relatives Mst.Imamzadi, Mst.Razia and Mst.Shahzadi was going to Larkana when at 2.00 pm they were intercepted by ASI JameelOdho and others policemen, their motorcycle was snatch and applicant alongwith his father were taken to the police station and on non-payment of bribe, the applicant was half fried and his father is still in police custody for whom Mst.Shahzadi filed 22-A and B Cr.P.C before learned Sessions Judge, Larkana which was dismissed and the same has been challenged before this Court; that on 8.7.2021 besides the case in hand present applicant was also involved in Crime No.19 of 2021 P.S Lashari and on 09.7.2021 he has been shown arrested in two other cases of recovery of K.K type repeater. On all these scores learned counsel contended that the prosecution case against the present applicant calls for further inquiry and he is entitled to concession of bail.

5. Learned Addl. P.G opposed the grant of bail on the ground that sufficient material is available against the applicant to connect him to the aforesaid crime, thus he is not entitled to the concession of post-arrest bail.

6. Tentative assessment of record shows that the alleged incident took place on 8.7.2021 and the applicant allegedly fled away, however, on the next day i.e 9.7.2021 he has been shown to have been arrested at the same place of incident as shown in F.I.R No.19 of 2021, in injured condition as per mashirnama of arrest prepared on the same day. However no separate F.I.R has been shown by the prosecution; medical report of injured P.C Zahid Hussain shows no fracture, however only 3 injuries have been disclosed as Shuja-e Khafifa Jurh-e Ghyar-e Jaifha Damiyah, additionally, no injury report of the applicant has been withheld /brought on record, for the reason best known to the prosecution, besides recovered article has not been shown to have been sent for the forensic report, for which the learned trial court will examine all the things as discussed supra.

7. In view of the above discrepancies, which need a thorough probe and the trial court has to look into all aspects of the case by examining the material as discussed supra.

8. Looking to the fact of the case against the applicant, which is of the alleged robbery, police encounter; and injury sustained by the complainant; and prima-facie police have not gathered sufficient material to deny post-arrest bail to the applicant, at this stage. However, the learned trial needs to examine the injured complainant on the date of the hearing, to substantiate the claim of the prosecution.

9. Taking into consideration the quantum of punishment, nature of the offense, and period of detention of the applicant, prima-facie, this case is found to be a fit case for post-arrest bail in the aforesaid crime in terms of section 497(2) Cr.P.C.

10. Let the applicant Abdullah Jatoi, allegedly involved in F.I.R No.101 of 2021, registered with Police Station Ratodero, for the offenses under Sections 353, 402, 399, 395, 397, 337A(i), 337 F(i), 337H(ii) PPC., read with section 6 and 7 of Anti-Terrorism Act, 1997, be released on post-arrest bail, on his furnishing a solvent surety in the sum of Rs.100000/- and PR Bond in the like amount to the satisfaction of the trial Court. However, it is made clear that the observation recorded hereinabove is tentative which shall not prejudice the case of either party at the trial.

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