

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Criminal Bail Application No. 2103 of 2021  
&  
Criminal Bail Application No. 2319 of 2021

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Date Order with signature of Judge  
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For hearing of bail application

Date of hearing: 09.03.2022.

Date of order: 09.03.2022

**APPEARANCE:**

Mr. Muhammad Rehman Ghous and Mr. Raghif Ibrahim advocates for applicants.

Ms. Rahat Ehsan Additional Prosecutor General Sindh

Mr. Mukseh Kumar G. Karara and Mr. Nabi Bux Leghari advocates for complainant.

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**Salahuddin Panhwar, J.-**Through the captioned bail applications, applicants Jaffar Dayo and Shahid Ahmed are seeking pre-arrest bail whereas, applicant Huzaifa Dayo is seeking post arrest bail in FIR No.682/2020 under Sections 397/34 PPC registered at PS Gulshan-e-Iqbal, Karachi.

2. Precisely, the facts of the prosecution case are that 09.11.2020 at 10:30 a.m. complainant Khalid Nawaz lodged FIR wherein it is alleged that on the same day at 1:30 a.m. three unknown young boys on the force of weapons committed dacoity of Rs.20 Million while tying the Chowkidar namely Abdul Jabbar.

3. Initially the challan was submitted under "A" class, later on the investigation was transferred to SIU, which was entrusted to Inspector Tariq Qayyum SIU Karachi. A police team constituted under the orders dated 08.06.2021 by SSP SIU Karachi, which team proceeded to Shikarpur and Kandhkot to arrest the accused. However, co-accused Arbelo surrendered before the police along with alleged looted articles, which came into his share whereas, according to prosecution case, accused Huzaifa was arrested and from his house police also recovered looted articles including prize bonds,

Dollars, golden ornament. Accused Huzaifa was produced before the concerned Judicial Magistrate, where he was identified by watchman.

4. Heard and perused the record.

5. With regard to the case of applicants Jaffar Dayo and Shahid Ahmed, record reflects that the only material implicating them in the present case is the statement of co-accused, which was given before the police, as such the same cannot be considered as evidence against them in view of the provision of Article 38 of Qanun-e-Shahadat, Order, 1984. Reliance is placed upon the case reported as Raja Muhammad Younas's case (2013 SCMR 669). Even otherwise, except for the statement of the co-accused, there is nothing on the record to prima facie connect the applicants with the commission of crime. In any event guilt or innocence of applicants Jaffar Dayo and Shahid Ahmed is to be determined on the basis of evidence, which is yet to be proved at trial. Besides, applicants have also pointed out *mala fide* on the part of complainant and police, therefore, they are entitled to concession of bail. Therefore, the interim pre-arrest bail granted to the applicants Jaffar Dayo and Shahid Ahmed by order dated 09.11.2021 is hereby confirmed on the same terms and conditions.

6. With regard to the case of applicant Huzaifa, according to prosecution case, he was arrested on the disclosure of co-accused Arbelo and from his possession, police recovered Dollars, golden ornaments, prize bonds. Perusal of record reflects that in the FIR complainant has alleged that Rs.20 Million were looted by the unknown accused persons and later on he included prize bonds, golden ornaments and US Dollars, however, no descriptions of such prize bonds, golden ornaments or USD were given by him. Thus, mere recovery of alleged looted articles would not suffice until and unless it is established that the same are exactly the same one which were allegedly robbed by the applicant. Record further reveals that the applicant was arrested on 28.08.2021 and on 06.09.2021, identification of the applicant was held, delay of eight days in holding of identification parade has not been accounted for by the prosecution, during identification parade, the applicant raised objection that witness has seen him in police lockup prior to the identification parade, such objection was noticed by the Magistrate,

therefore, possibility of applicant having been shown to the prosecution witness before the conducting identification parade could not be ruled out, which also loses its evidentiary value. Further, the applicant has alleged that he was arrested on 14.06.2021 at 0330 hours in night from his house situated in village Kalu Khan, Kandhkot, within the jurisdiction of P.S Stuart Ganj but when police did not show his arrest, a Criminal Misc. Application bearing No. 410/2021 under Section 561-A Cr.P.C has been filed on 29.06.2021 against the police and in retaliation the police in order to save themselves from the case involved the applicant. The case of the applicant is supported by the relevant documents which have been filed along with the instant Bail Application. It is established principle of law that benefit of doubt can even be extended at bail stage. Reliance in this regard can be placed on the case law reported as **Muhammad Faisal v. The State and another (2020 SCMR 971)**. Lastly, it is contended by learned counsel for the complainant that punishment provided under Section 395 PPC is for 10 years which falls within the prohibitory clause of Section 497 (1) Cr.P.C, however, it appears that the punishment provided under Section 395 PPC, is either for life imprisonment or for a term which shall not be less than 4 years nor more than 10 years and shall also be liable to fine. At the stage of bail, the lesser punishment is to be taken into consideration, as the quantum of punishment could only be decided by trial Court after recording of evidence. Reliance is placed on the case of **Shahzore v. The State (2006 YLR 3167)**.

7. It is now well settled that an accused cannot be kept in jail as punishment merely on the ground that he is directly charged for an offence falling under the prohibitory clause of section 497 Cr.P.C., because a mistaken relief of bail may be repaired by convicting the accused, if proved guilty, but no proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on case of **Zaigham Ashraf v. The State and others (2016 SCMR 18)**, wherein it is held that:

"9. To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner."

8. Tentative assessment of the material available on file suggests that applicant has made out a case for grant of bail. Resultantly, applicant is admitted to bail subject to his furnishing surety in the sum of Rs.100,000/- (rupees on lac) and P.R bond in the like amount to the satisfaction of the trial Court.

9. These are the reasons for the short order announced on 09.03.2022. Needless to mention that the observations made above are purely tentative in nature which shall not prejudice the mind of trial Court.

J U D G E

Sajid