

[High Court of Sindh (Karachi)]

Present: Muhammad Shafi Siddiqui, J

Khaista Meer & another---Applicants/Accused

Cr. Bail Application No. 629 of 2012 decided on 3rd July, 2012

**A) Pakistan Penal Code, 1860---Sections, 34, 392 & 397---
Contradiction in statement---Further Inquiry---The name of the
applicant is not mentioned in statement of the driver and driver
also categorically stated that he was not been weapon by himself---
There is also contradiction in the statement recorder u/s 154
Cr.P.C. & 161, Cr.P.C for nominating the applicants in FIR---
Applicant have not been arrested at the spot nor was any
independent witness cited. Applicants also not face the
identification parade---So, the case required further inquiry and
applicant released on bail. [P-1410]A**

P. Cr.L. J 2011, 445; YLR 2008.2105; P.Cr. L. J, 1947 relied upon. PLD 1960 (EP) Lahore 559 & PLD 1963 SC, 737 referred

Mr. Saadat Hassan, Advocate for the applicants.

Ms. Rahat Ahsan A.P.G.

Date of hearing: 29th June, 2012

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.- The applicants seek post arrest bail in FIR No. 127/2012 under section 392/397/34 PPC lodged at Police Station Peerabad.

The facts of the prosecution case as incorporated in the FIR in terms of the complainant Firdous Khan's statement are that the complainant is in business of transport with one Haji Roshan and has purchased Bus No. K-6583, Model 1990 which was plying on contract duty. After duty, the vehicle was used to be parked near the college situated near Pashtoon Market. On 26.3.2012 i.e. the day of incident at 07:00 a.m. when the driver of the complainant namely Imroz Khan was parking the bus, four persons namely Suleman Shah, Awal Meer along with two brothers Khaista Meer Khan and Khan Meer came and on gun point asked driver Imroz Khan to keep away from the bus as their money is due from the bus owner. It was further narrated in the FIR that due to fear the driver Imroz Khan left the bus, however, he made efforts to solve the situation but all in vain, hence the instant case was registered.

The applicants were arrested by the Police Station in the aforesaid FIR. Subsequently the applicants have moved the first bail application before the trial Court which was dismissed on 11.5.2012 on merits and the second bail application moved by the applicants was also dismissed on 15.6.2012 on the ground that no fresh ground has been placed to entertain the second bail application. Consequently, the applicants have moved this application.

Learned Counsel for the applicants has contended that there is delay in lodging the FIR as the incident took place on 26.3.2012 and the FIR was lodged on 02.4.2012 whereas the distance between the place of incident and Police station is one kilometre. He has further contended that the applicants are absolutely innocent and have falsely been involved in the above case. It is submitted by the learned Counsel that the complainant Firdous who lodged the FIR was not present at the place of occurrence, hence he has not witnessed the incident whereas the FIR was lodged on the disclosure of his driver Imroz Khan and it was accepted and recoded as ipse-dixit. He has also contended that the applicants were arrested on 16.4.2012 and remain in police custody for considerable period but nothing came out from such investigation. The statement of the driver Imroz Khan was recorded by the Investigation Officer on 03.4.2012 under section 161 Cr.P.C wherein he stated that he did not see weapons and stated that two persons were muffled faces whereas one accused disclosed his name to be Suleman Shah while the other accused could be identified if brought before him by arranging an identification parade. However, the two muffled face accused persons were yet to be identified by the driver. It is submitted that the case of the applicants is of further inquiry and there is a contradiction between the statements recorded under Sections 154 Cr.P.C. and 161 Cr.P.C. Without prejudice to the above contentions, learned Counsel lastly submitted that in terms of Section 397 PPC the robbery or dacoity committed by the offender by using any deadly weapon or causes grievous hurt to any person would come within the definition of section ibid. Since the applicants/accused have not used the weapon inasmuch as it has not been used to "fire" it cannot be said that show of weapon comes under such definition prescribed in Section 397 PPC. Learned Counsel for the applicants has relied upon the cases reported in 2011 P.Cr.L.J 445, 2008 YLR 2015 and 2007 P.Cr.L.J 1947.

On the other hand the learned State Counsel Ms. Rahat Ahsan has not uttered a single word as far as the merit of the bail applications is concerned. However, she submitted that the order, whereby the first bail application was rejected, was passed on

merits and that since no fresh ground was raised in the second bail application, the trial Court also dismissed the second bail application of the accused.

I have heard the learned Counsel and perused the material available on record.

As far as the last contention of the learned Counsel regarding use of weapon is concerned, I am not at all convinced that the word "use" used in section 397 PPC can be given a restricted meaning. In my view, if the accused is armed with the weapon threatens victims it would come within the definition of "use of weapon" which in fact would makes it easier for the accused or other culprits to perform action which they intended to and hence the definition cannot be restricted to what the learned Counsel has submitted. Although these arguments were without prejudice to the other arguments raised by the learned Counsel, however it is necessary that the word "use of weapon" should be defined for its interpretation. If any reference is needed, following cases can be looked into.

1. PLD 1960 (W.P) Lahore 559 and
2. PLD 1963 SC 737.

Now, I come to the other limbs of arguments. It is apparent that the statement of driver Imroz Khan was recorded on 03.4.2012 and the names of the applicants are not mentioned in such statement and he categorically stated therein that at the time of incident, he, himself, has not seen weapons. He has further stated in the statement that one accused person himself disclosed his name as Suleman Shah through he himself did not say that he personally knew that Suleman Shah. The applicants have not been arrested at the spot nor was any independent witness cited. The applicants were not put to identification parade. It is admitted by the driver that he himself could not identify rest of the three accused persons, how the complainant knew their names and nominated them in the FIR when he had even not witnessed the incident. It is also apparent that the statements under Sections 154

Mobin Rafique Ahmed v. Rashid Ahmed
(Muhammad Shafi Siddiqui, J)

1411

Sindh

Cr.P.C and 161 Cr.P.C are also in contradiction at least to the extent of nominating the applicants in the FIR.

Under the circumstances, the case of the applicants is of further inquiry and therefore, I allow this application and admit both the applicants to bail subject to their furnishing surety in the sum of Rs. 100,000/- each (Rupees One Lac each) and P.R. bond in the like amount to the satisfaction of the Nazir of trial Court.

Bail granted.