

ORDER SHEET.
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Cr. B.A. No. S-270 of 2013.

1. For orders on office objection.
2. For hearing.

25th June, 2013.

Mr. J. K. Jarwar Advocate for the Applicant.
Mr. A.R. Kolachi, APG for the State.

The applicant/accused Mohammad Moosa seeks post arrest bail in Crime No. 51 of 2013, registered at Police Station, B-section, Sukkur, under Section 412 PPC.

Brief facts of the prosecution case as disclosed in the FIR are that on 29.4.2013, complainant ASI- Shakeel Ahmed Pathan left police station along with his subordinate staff for investigation of crime No. 50 of 2013, under sections 324, 353 PPC and conducted raid at the houses of the accused persons, but they were not available. At 1130 hours on same day, wanted accused, namely, Muhammad Moosa, Khamiso, Anwar, Saeed Ahmed, Hidayatullah and Ghulam Haider, all by caste Chachar were seen by the police party on four motorcycles at Shikarpur railway crossing. Accused persons while seeing the police party, threw their motorcycles and ran away, however, police succeeded to catch hold accused Mohammad Moosa along with motorcycle No. AFR, engine No.301504. Police secured motorcycle under section 550 CrPC. Accused Mohammad Moosa was arrested, thereafter FIR was lodged by ASI on behalf of State, under section 412 PPC.

Learned APG says that remaining accused were arrested subsequently. Applicant/accused Mohammad Moosa along with co-accused applied for bail before learned Additional Sessions Judge (Hudood), Sukkur. Concession of bail was extended to co-accused by order dated 16.5.2013, however, bail plea of Mohammad Moosa was rejected. Thereafter, applicant has approached this court.

Mr. J.K. Jarwar, learned counsel for the applicant has submitted that brother of the applicant had filed application under section 491 Cr.P.C on 29.4.2013 before learned Sessions Judge, Sukkur regarding illegal detention of

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applicant/accused and others; Civil Judge & Judicial Magistrate Sukkur conducted raid on 29.4.2013 at 1000 hours, and the applicant Mohammad Moosa and others were found detained, however, it is argued that police mala fide had shown that the applicant Mohammad Moosa and others under arrest in crime No. 50 of 2013 under sections 324, 353 PPC. Learned counsel further contended that the complainant lodged the FIR against the applicant and others under section 412 PPC to save his skin from the raid conducted by Civil Judge & Judicial Magistrate regarding illegal detention of applicant and others. He further submitted that on similar allegations co-accused have been granted by trial court and the case of the applicant was not distinguishable. Lastly, he submitted that ingredients of section 412 PPC are not satisfied in this case. Case has been challaned and the applicant is no more required for investigation. In support of contentions, reliance has been placed upon case of Farooque Ahmed v. The State (2007 PCrLJ 345).

The learned APG conceded to contentions raised by learned advocate for the applicant/accused and recorded no objection

Perused the contents of the FIR, 161 Cr.P.C. statements of PWs and other material collected during investigation, prima facie, there is no material to show that the motorcycle recovered from the applicant/accused was stolen property and it was dishonestly retained by the applicant and used in the commission of the dacoity. As such, from the material collected during investigation, yet it is to be determined at the trial whether alleged offence committed by the applicant would fall under section 412 or 411 PPC. Reliance has been rightly placed upon the case of Farooque Ahmed v. The State (2007 PCrLJ 345). It has also been brought on record that there is background of enmity between the applicant and the police as brother of the applicant had filed an application under section 491 Cr.P.C before learned Sessions Judge, Sukkur regarding illegal detention of the applicant. Consequent upon the raid, it is alleged that applicant was recovered and police registered the aforesaid case against the applicant and others. Learned counsel for the applicant has also argued that case of co-accused more or less was same, concession of bail has been extended to them by the trial court. In these circumstances, prima facie case against the applicant/accused Mohammad Moosa requires further inquiry, as contemplated under sub-section (2) of section 497 Cr.P.C. Therefore, concession of bail is extended to the applicant/accused

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Mohammad Moosa subject to his furnishing solvent surety in the sum of Rs. 50,000/- (Rupees Fifty Thousands) with PR bond in the like amount to the satisfaction of the trial court.

Bail application is allowed.

Judge

Ahmed