ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr.Bail Appln.No.710 of 2021

Date | Order with signature of Judge

For hearing of bail application.

03rd June 2021

Mr. Abdul Basit, advocate for applicant/accused
Mr. Siraj Ali Khan Chandio, Addl. P.G. Sindh alongwith I.O. Rashid Ali, P.S. Kalakot

SALAHUDDIN PANHWAR, J- Applicant Muhammad Iqbal seeks post arrest bail, in Crime No.145 of 2021 registered with Police Station, Kalakot for offence under section 382/34 PPC.

2. Precisely, the facts of the prosecution case are that complainant Mujeeb-ur-Rehman lodged FIR on 28.03.2021 at 1445 hours, that on the same day at about 1400 hours, he was on chat with his brother on mobile phone at Ranger Chowki near Bakra Peeri, suddenly two persons appeared there on motorcycle and snatched his cell phone by showing weapon, they tried to run away, but fell down due to collide with a car. Out of them one person was caught hold by public, while other made his escape good. In the meanwhile, police arrived and apprehended accused, who disclosed his name as Muhammad Iqbal son of Abdul Majeed, on his personal search police recovered snatched mobile phone of complainant in presence of mashirs, thereafter, accused and case property were brought at police station where the FIR under the above referred sections was lodged by complainant.

3. Learned counsel for applicant *inter-alia* contended that applicant/accused is innocent and has been falsely involved in this case due to non-payment of illegal gratification; that nothing was recovered from the possession of the applicant; that the alleged incident took place at day time in

thickly populated area but no private person was associated to witness the recovery and arrest; that he was made scapegoat by letting the real culprit, he therefore, prayed for grant of bail.

4. Learned Additional Prosecutor General Sindh opposed bail application on the ground that present applicant was apprehended by public at the spot and from his possession robbed mobile phone of complainant was recovered; that no enmity or ill-will has been pointed out against the police officials by the defence counsel, therefore, he prayed for dismissal of the instant bail application.

5. Heard and perused the record.

6. Before attending the merits of the case, it is appropriate to *first* insist that plea of offence, not falling within prohibitory clause of Section 497(i) of the *Code,* alone is not sufficient to claim bail because regardless of grant of bail in such like offences as ***rule*** the discretion continues lying with the Court (s). Guidance is taken from the case of *Shameem Ahmed v. State* 2009 SCMR 174 wherein such principle stands reaffirmed as:-

> "4. …. With regard to the contention that bail should always be granted in cases not falling within the domain of prohibition clause f proviso to section 497 Cr.PC, it is observed that it is not a rule of universal application. Each case has to been (be) seen through its own facts and circumstances…

7. I would further add that offence (s), having *limited* gravity, would always stand separate from those offences which, *otherwise,* have serious or grave effect (s) upon public at large, even if both such offences not attracting the bar, as provided by Section 497(1) Cr.P.C. The ***'rule'*** of granting bail in cases, not falling within prohibitory clause, can well be ignored in matter (s) falling within second category. The reference is made to the case of *Saeed Zaman v. State & another* 2020 SCMR 1855 wherein it is held as:-

> "4. Law on the grant or refusal of bail in criminal cases is by now clearly contoured and well settled, the regime is an interlocutory arrangement to ensure physical presence of an accused so as to confront the indictment pending conclusion of the trial, either under judicial custody or with a surety to produce him before the Court as and when required. In the non-bailable category of offences, grant of bail in crimes punishable with imprisonment of less than 10 years, presumably with **charges on the lower side of gravity scale, the**

> **release of accused, after conclusion of investigation isa rule, however, even in appropriate cases, the Court may still validly decline the concession….**

The roads / streets are always meant to be used with sense of *safety* and *security* which, *too,* not for an *individual* (as normally is case for a *house)* but for ***public at large*** therefore, act of robbing / looting people from roads / streets, in my view, would be different from a criminal act, effecting *individuals* therefore, for seeking bail in such like case(s), mere plea of offence, not falling within prohibitory clause, would not be sufficient to claim bail but would require a *tilt* towards the case to be falling within **further inquiry.**

8. Now, reverting to merits of the case, the record reflects that applicant along with his accomplice on a motorcycle allegedly snatched away a mobile phone from complainant on the force of weapon; however, they fell down at the corner of street due to collide with a car and applicant was apprehended by the public at the spot, whereas his accomplice succeeded to escape; that the police arrived and recovered mobile phone of the complainant from the possession of the applicant; that the prosecution witnesses in their statements under section 161, Cr.P.C. have implicated the applicant; no enmity of the applicant with the complainant is shown, thus there is a prima-facie sufficient material against the applicant to connect him with the offence alleged against him, therefore, I am of the considered view that the applicant has failed to make out his case for grant of bail, resultantly, his bail application is dismissed.

9. While parting, I can't help myself in adding that it is shocking to note that despite of mugging, police station Kalakot registered FIR under sections 382/34 PPC, which relates to the case of theft. It is needless to add that applying proper sections of offences, per facts, was / is the absolute responsibility of the **Officer in-charge** because pen and knowledge for appropriate section of offence, *legally,* rests with such person. Thus, changing the status of incident from severe to ordinary/lessor shall always require an explanation.

10. Regret to admit that normally police is always reluctant to lodge FIR and second strategy is not to apply proper section so as to avoid or get

escaped from the hue and cry of the society due to heinous crimes. Needless to add that lodgment of FIR for a cognizable offence is an *undeniable* duty of the police, therefore, said policy or practice for any *reason* should be discouraged.

11. I would also add that lodgment of FIR (s) may reflect upon control of police but proper investigation and unearthing crimes shall always result in assuring sense of security as well deterrence, therefore, police is expected not to avoid lodgment of FIR(s) *even* of cases of having serious effects / gravities merely to avoid a question over its control in area.

12. Accordingly, I.G.P. Sindh shall direct all concerned SSPs to direct all **in-charge(s) of police stations** to ensure immediate lodgment of FIR without any *reluctance* of cognizable offence(s) and that of proper application of the sections of offence(s). Any departure, needless to add, shall expose the delinquent to an explanation for which the Magistrate(s), being supervisory authorities, would be competent to take action(s). *Prima facie*, this is malice on the part of the concerned SHO, hence, Additional IGP Karachi, shall conduct inquiry and take action against the delinquent official. As well as learned Prosecutor General Sindh shall also direct all Prosecutor(s) to examine this aspect while scrutinizing report (Challan) under Section 173 Cr.P.C.

13. It needs no reiteration that the observations made hereinabove are tentative in nature and the same shall not influence the learned trial Court while deciding the case on merits.

Learned MIT-II shall ensure compliance and information to concerned quarters.

J U D G E

Sajid