

**IN THE HIGH COURT OF SINDH, BENCH AT
SUKKUR.**

**Crl. Bail Application No. S- 550/2022.
Crl. Bail Application No. S- 564/2022.**

Date of hearing	Order with signature of Judge
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For Hearing of Bail Application.

ORDER.
25.11.2022.

Syed Ali Aamir Shah, Advocate for applicants in Crl.
Bail Application No. S- 550 of 2022.

Mr. Javed Iqbal Chang, Advocate for applicants in
Crl. Bail Application No.S- 564 of 2022.

Syed Sardar Ali Shah, Additional P.G.

NAIMATULLAH PHULPOTO J., Through this order, I intend to dispose of post arrest bail applications filed on behalf of applicants/accused Behram Ali, Yaseen Ali both sons of Rasool Bakhsh, Ishtiaueq Ahmed son of Khawandad and Syed Ahmed Shah son of Saj Ali Shah in crime No. 184/2022, for offences under sections 411, 412 PPC registered at police station Mehrabpur. Prior to this, post arrest bail filed on behalf of applicants/accused was rejected by learned Additional Sessions Judge, Kandiaro vide order dated 27.10.2022, hence, they have filed instant bail applications.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 29.09.2022 Inspector Abdul Rasheed Chanio left Police Station along with his

subordinate staff for patrolling duty. During patrolling he received spy information that accused Behram and Yaseen both sons of Rasool Bakhsh Noonari are involved in receiving / selling spare parts of stolen motorcycles at their shops. On such information, police party proceeded to the shops of applicants and found one container loaded / parked in front of shop of applicants, it was 1600 hours. It is alleged that three accused while seeing police party ran away, however, container was seized by police. It is further stated that police caught hold accused Imran Ali son of Hussain Bakhsh Noonari, Ishtiaque Ahmed son of Khunnidad Awan and Syed Ahmed Shah son of Sajj Ali Shah. Applicants Ishtiaque Ahmed and Syed Ahmed Shah claimed to be drivers of the container while applicant Imran Ali was cleaner, they were caught hold by police. Police searched articles lying in the container and found chasis and engine parts of 36 motorcycles. Both drivers and cleaner were arrested so also owners of the shops where container was parked. After usual investigation challan was submitted against applicants under sections 411 and 412 PPC.

3. Learned advocates for applicants mainly argued that according to prosecution case motorcycles were stolen but complainants / owners of motorcycles have not been examined by the Investigating Officer during investigation. It is further argued that applicants were drivers and cleaner of the container and they were not involved in the commission of offences. It is further submitted that applicants Behram and Yaseen were shop keepers and nothing was recovered from their shops. It is further argued that ingredients of Section 412 PPC are missing in this case and case against applicants require

further enquiry. In support the contentions, reliance is placed upon the cases of Shahnawaz v. The State in Criminal Bail Application No.S -575 of 2009 filed before circuit Court of this Court at Hyderabad and Yousif Ali vs. The State passed in Criminal Bail Application No.S=124 of 2018 filed before circuit Court of this Court at Larkana.

4. On the other hand, learned Additional Prosecutor looking to the facts and circumstances of the case recorded no objection for grant of post-arrest bail, however, prayed for heavy surety as applicants belong to Karachi and province of Punjab.

5. I have heard learned counsel for applicants/accused, learned Additional Prosecutor General and perused the relevant record. FIR No.184/2022 was lodged against applicants on 29.09.2022 on behalf of State under Sections 411, 412 PPC. Admittedly during investigation, Investigating Officer had failed to interrogate about the owners of motorcycles. Applicants Ishtiaque Ahmed and Syed Ahmed Shah were drivers of container and claimed innocence in this case. Applicants Behram and Yaseen are brothers and raised plea that nothing was recovered from their shop, only a container was parked in the street where shop of these applicants is situated. So far ingredients of Section 412 PPC are concerned, it is necessary to show not only that the accused was in possession of the robbed property but further that he knew or had reason to believe that the property had been transferred by the commission of the dacoity. Offence under section 412 PPC is much more serious than offence under section 411 PPC. Where there is no evidence to show that the accused had knowledge that the property in possession is subject-matter of the dacoity, he cannot be tried and convicted under section 412 PPC. Since

owners of motorcycles have not been examined by the Investigating Officer during investigation.

6. Prima facie, there are no reasonable grounds for believing that applicants have committed the alleged offences and case against the applicants named above require further enquiry under section 497(2) Cr.P.C. As such applicants namely : Behram Ali, Yaseen Ali, Ishtiaque Ahmed and Syed Ahmed Shah are directed to be released on bail subject to furnishing their solvent surety in the sum of Rs. 200,000/- (Two lacs) each and PR bond in the like amount to the satisfaction of trial Court.

7. The aforesaid bail applications stand disposed of in the above terms.

J U D G E

Irfan/P.A