

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S- 1097 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

24.11.2022.

Mr. Saad Salman Ghani, Advocate for applicant alongwith applicant (on bail).

Mr. Imran Ahmed Abbasi, A.P.G for State.

ORDER

Muhammad Saleem Jessar, J.- At the very outset learned counsel for applicant submits the copy of case diary dated 10.11.2022 issued by Consumer Protection Court / Civil Judge & Judicial Magistrate, Tando Muhammad Khan (trial Court), taken on record. Per case diary the I.O had submitted the final report u/s 173 Cr.P.C and said case is now pending for trial before the trial Court on 25.11.2022 viz. tomorrow.

2. Through instant application, applicant Haris Anwar seeks his admission on pre-arrest bail in Crime No.226 of 2022 registered at P.S Tando Muhammad Khan under Sections 380, 419, 420 PPC. Applicant preferred Criminal Bail Application No.450 of 2022 before the Court of Sessions, Tando Muhammad Khan wherefrom it was assigned to Additional Sessions Judge-I, Tando Muhammad Khan, who after hearing the parties, declined his request to grant pre-arrest bail vide his order dated 05.10.2022 and recalled the interim order dated 27.09.2022. Hence this bail application.

3. The facts of the case are already mentioned in FIR as well as in memo of bail application hence need not to be reiterated.

4. Learned counsel for applicant submits that no specific date and time is shown in respect of the occurrence besides the offence with which the applicant stands charged does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. He further submits that applicant has joined the trial proceedings and has not misused the

concession of bail therefore, interim pre-arrest bail granted earlier may be confirmed.

5. On the other hand, learned A.P.G appearing for State opposes the bail application on the ground that applicant is nominated under FIR besides has stolen away 173 tents provided for the flood affectees of the area. He; however, could not controvert the fact that no specific date and time of occurrence is mentioned in the FIR besides offence is unseen, also could not controvert the fact that memo of recovery dated 21.09.2022 does not reflect the place of recovery to be owned by applicant.

6. Heard. Record perused.

7. Admittedly, no specific date and time is mentioned in FIR regarding the occurrence besides alleged tents have not been shown to have been recovered from his possession; however, per memo of recovery dated 21.09.2022 same have been shown from the place which does not belong to applicant. Said recovery was effected in absence of applicant hence it is yet to be determined by trial Court after recording prosecution evidence whether the applicant was responsible for alleged theft or otherwise. The case is being tried by the Court of Judicial Magistrate where after recording evidence of prosecution witnesses if the prosecution may succeed to prove its charge against him even then the punishment of more than 03 years cannot be visualized. In the light of dictum laid down by Honourable Supreme Court in the case of Muhammad Tanveer v. The State and another (PLD 2017 Supreme Court 733), the case against applicant requires further enquiry. In the circumstances and in view of above factual position, the case against applicant requires further inquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant bail application is hereby allowed and the interim pre-arrest bail already granted to applicant on 20.10.2022 is hereby confirmed on same terms and conditions. However, applicant is directed to continue his appearance before the trial Court, without fail.

JUDGE

Tufail