

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 965/2022
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DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

Mr. Zaheeruddin Mehsood, Advocate for applicant.
Mr. Talib Ali Memon, A.P.G. a/w ASI Zafar Ahmed and ASI Nadeem Babar.
Ovais Mughal, AVP Fraud Risk Management Department, Summit Bank and Ms. Nazia Zulfiqar, Branch Manager, Summit Bank, Clifton.
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Omar Sial, J.: Suhail Khan and Mohammad Adnan have sought post arrest bail in two different crimes they are accused in. Criminal Bail application No. 965 of 2022 arises from F.I.R. No. 529 of 2022 whereas Criminal Bail application No. 966 of 2022 arises from F.I.R. No. 167 of 2022. Although the two bail applications pertain to different crimes, they are so connected that they will be disposed of through this common order.

2. **F.I.R. No. 529 of 2022**

This F.I.R. was registered under sections 380, 454, 457 and 34 P.P.C at the Clifton police station in Karachi. It was lodged on the complaint of Najia Zulfiqar on 03.12.2021, who was the manager of Sindh Bank's Tauheed Commercial branch. She recorded on 29.11.2021 when reconciliation of the cash deposited in the Branch's ATM Machine was made with the cash drawn from it, a shortage of Rs. 560,000 was discovered. Recording captured by the CCTV inside the ATM booth was checked and it was seen that 3 persons were engaged in hacking the ATM machine and taking money out of it. F.I.R. No. 529 of 2021 under sections 380, 454 and 457 P.P.C. was registered against unknown people at the Clifton police station.

3. **F.I.R. No. 167 of 2022**

Nadeem Ahmed, who was a manager of the Summit Bank's Tauheed Commercial Area Branch, on 19.04.2022 reported an incident that had occurred at the Branch on 16.04.2022. Nadeem narrated to the police that on 18.04.2022 when reconciliation of the cash deposited in the Branch's ATM Machine was made with the cash drawn from it, a shortage of Rs.1,280,000 was discovered. Recording captured by the CCTV inside the ATM booth was checked and it was seen that 3 persons were engaged in hacking the ATM machine and

taking money out of it. F.I.R. No. 167 of 2022 under sections 380 and 454 P.P.C. was registered against unknown people at the Clifton police station.

4. It has been explained further to me that the applicants in these bail applications i.e. Sohail Khan and Muhammad Adnan Zafar, were arrested after having committed a similar offence employing the same modus operandi at another bank. In that incident, F.I.R. No. 126 of 2022 has been registered at the Arambagh police station and the 2 applicants had been identified through the recording of the CCTV cameras installed in the ATM booth of that Bank. It was after their arrest in that case that their involvement in the present cases was unearthed.

5. Learned counsels for the applicants have argued that the applicants are not named in the F.I.R.; there is a 4 day delay in the lodging of the F.I.R.; the CCTV footage collected by the investigators cannot be relied upon; an identification parade was not held; as the alleged incident has taken place inside an ATM booth the provisions of section 454 and 457 are not attracted; that the applicants have been granted bail in the crime arising out of F.I.R. No. 126 of 2022; and that the applicants had no crime record. He also argued that in a number of cases the Supreme Court has granted bail to persons in similar circumstances. The learned APG has supported the bail dismissal order of the learned trial court.

6. I have heard the counsels for the applicants and the learned APG as well as the complainants in person.

7. It has transpired during the hearing of these application that the modus operandi used by the accused was that they had made a key which enabled them to open the cover of the ATM and expose its circuitry. A USB would be inserted in the appropriate place which would have the effect of cutting of that ATM from the Bank's network. A laptop would then be attached to the machine with which the accused were able to bypass all locks and enable the ATM to expel the cash loaded in the machine. When the accused were arrested in the crime arising out of F.I.R. No. 126 of 2022 registered at the Arambagh police station (in which they had been identified through CCTV footage) the police discovered that the mechanism used by them in that Bank robbery was the same as the one deployed in the present cases. After interrogation, it transpired that it was the same set of accused who had committed robberies in both these cases using exactly the same modus operandi. It was also discovered that the same accused were also wanted in 2 cases (F.I.R. No. 48 of 2022 and F.I.R. No. 188 of 2021) registered in Lahore and Multan against them under the cyber-crime laws.

8. The investigating officer of the case agreed that in the CCTV footage recovered in the present cases, the applicants' faces could not be seen clearly, this was the reason that an identification parade was not held. Learned APG also confirmed that the applicants were granted bail in the case arising out of F.I.R. No. 126 of 2022. Be that as it may, I am not satisfied that the foregoing, in the circumstances of the present case, is sufficient reason for the applicants to be admitted to bail. I have gone through the bail granting order in the case arising out of F.I.R. No. 126 of 2022 and while I do not wish to comment on the same in detail as the case is not front of me, suffice to say that I am not satisfied that the benefit of bail granted in that case should flow through to the applicants in the present case.

9. The USB, the laptop, the key used and the other paraphernalia used by the accused in this case are already in possession of the police (in F.I.R. No. 126 of 2022). The applicants have been identified committing the robbery in that case. This case is not the usual run of the mill case. It involves the understanding and deployment of sophisticated and specialized software and equipment which is not easy to find or use. The software installed and used to bypass the electronic security locks of the ATM and make it function in an unusual manner can only be the work of a specialized software engineer or programmer; work and expertise that would not be easy to duplicate. Prima facie, there is a very strong possibility that the use of the same modus operandi in different branches of different banks to loot ATM machines is the work of the same gang. It also appears that the robbers would strike a bank ATM when the weekend was beginning and hence it was 2 days before the Bank discovered the shortage of funds. Delay in the lodging of the F.I.R. appears to have therefore occurred. Further, the involvement of the applicants in cyber-crime related offences in Multan, in the circumstances of the present case, also tilts the balance in favour of declining their bail applications.

10. The learned counsels argument that the applicants do not have a crime record is obviously incorrect and I see no ground to support his argument that the present cases are an outcome of malafide.

11. Above are the reasons because of which the captioned bail applications were dismissed vide short order dated 02.06.2022.

JUDGE