

ORDER SHEET  
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 738 of 2022

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DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

14<sup>th</sup> June, 2022

Mr. Shoukat Ali Bhanbhro, Advocate for applicant.  
Mr. Talib Ali Memon, APG a/w Muhammad Altaf, SSP Investigation  
East, SIO Mehboob and DSP Raza Mian (Legal).  
Complainant present in person.

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Omar Sial, J: Muhammad Aijaz and Zawar Hussain have sought post arrest bail in Crime No. 158 of 2021 registered under sections 324, 353, 397 and 34 P.P.C at the SSHI Police Station. Earlier, their application seeking bail was dismissed by the 5<sup>th</sup> Additional Sessions Judge at Karachi Malir on 13.04.2022.

2. The FIR was lodged by Barkat Ali on 04.02.2022 reporting an incident which had occurred earlier that day. Barkat Ali recorded that he along with his driver Najeebullah were travelling on the Super Highway towards DHA city. They were travelling in their company owned car when the same broke down. While they were in the process of fixing the car, a rickshaw came and stopped next to them. From the said rickshaw emerged 7 people, armed with pistols, who on the show of weapons snatched away their phone and money from them. A police mobile which noticed the commotion approached the scene of incident. Upon seeing the police mobile, the armed accused(s) opened fire which was retaliated by the police. In the shootout that ensued the police were able to apprehend three of the accused(s) who were identified as Muhammad Aijaz (applicant), Azam and Zawar (applicant). The looted valuables as well as their pistols were recovered from them by police on the spot. Further from the scene the police also recovered 5 empties of 30 bore pistols, 4 empties of a 9 MM pistol and 1 empty of a SMG.

3. The learned counsel for the applicant argued as follows; the FIR does not mention the number plate of the rickshaw; there is no mention of the company in which the complainant was employed; there was no description of the car in which the complainant was travelling; neither any facial

description of the accused(s) was provided and that no details for the mobile phone that was recovered from the accused have been provided. He also pointed out that It is also quite unnatural that despite cross fire everyone remained unharmed. As far as the recovery of weapons was concerned it was the counsel's view that the same had been foisted upon the applicants.

4. To the contrary, the learned APG supported the bail dismissal order. The complainant was present in person but did not engage any counsel for representation. I have heard the counsel for the applicant and the APG. My observation and findings are as follows.

5. Initially, I was skeptical about the possibility of 7 adults fitting in a rickshaw ride and thought that it was an odd mode of transport to use for robbing people. However, upon instructions from this Court SSP Investigation East had affected an appearance and has put on record a photograph of a rickshaw similar to the one that was used in the incident. This rickshaw was different and in fact much bigger in size than a normal rickshaw and could prima facie have the capacity to seat 7 people. It was also explained that sometimes a similar mode of transport was used by criminals in order to escape easily within the city. The SSP Investigation also explained that the police was conducting raids in order to locate the rickshaw and that it was hopeful that as a consequence of the revelations made by the accused(s) not only would they be able to recover the rickshaw but also arrest the 4 absconding accused who have been identified .

6. There are two common private citizens who are an eye witness to the occurrence. They are both employees of a Chinese owned company; ostensibly working under the CPEC Project. The company has confirmed the said two witnesses' employment with it. The learned counsel for the applicant has not been able to point out or explain as to why these two independent witnesses would falsely blame the accused party of having been involved in robbing the complainant.

7. The learned counsel's argument, in so far as concerns the absolute lack of any damage to property or life despite a shoot-out does have some weight as far as the allegation of an offence under section 324 having been committed is concerned. However, there appears to be sufficient evidence in the shape of independent eye witnesses coupled with on the spot arrest and recovery which establishes at least the occurrence of an offence under section

397 P.P.C. The grounds raised by learned counsel as to non-description of the accused hold little weight in view of the fact that they were arrested on the spot. Similarly, the not mentioning of the registration number of the rickshaw in which the accused were travelling is an aspect of the case which requires deeper appreciation of evidence; the impact of which will be determined by the learned trial court after it has had the opportunity of reviewing the evidence produced before it.

8. In view of the above, the bail application stands dismissed.

JUDGE