

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1502 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>8th December, 2021</u>	
<p>Mr. Rana Muhammad Arshad, Advocate for applicant. Mr. Haad M. Pagganwala, Advocate for complainant. Mr. Abrar Ali Khichi, Addl.P.G. a/w SIP Muhammad Ali, I.O.</p> <p>=====</p> <p>Omar Sial, J: Zahida has sought post arrest bail in crime number 636 of 2020 registered under sections 381 and 337-J P.P.C. at the Gizri police station in Karachi. Earlier, her application seeking bail was dismissed by the learned 2nd Additional Sessions Judge, Karachi South on 17-7-2021.</p> <p>2. The aforementioned F.I.R. was registered on 19-12-2020 on the complaint of Kamran Javed Malik. Kamran recorded that on 17-12-2020 while he was home along with his wife and three daughters, the applicant, who was engaged as a domestic help the previous day, made tea for them and that after drinking the tea they felt extremely unwell and subsequently fell unconscious. The couple had to be taken to a hospital by their relatives and they remained admitted there till 19-12-2020. When they came back home they discovered that a number of their valuables as well as cash was missing. The applicant also disappeared that day.</p> <p>3. During the investigation of the case it was revealed that a few days before the incident two women had been brought to work at the house of the complainant by another domestic help. After interviewing the two prospects, the complainant hired the applicant Zahida for the job. After the incident when the domestic help who had referred the two women for work was interrogated and on the basis of information he provided coupled with call data record (of a phone number that has been provided by the two women), the police raided a house in a <i>katchi abadi</i> where Shamim (the woman who had accompanied the applicant for the job interview was found). Shamim in her interrogation disclosed a whole gang of people which would conduct similar operations in people's homes. Shamim's disclosure led the police to where Zahida had hidden herself and</p>	

recovery of a number of valuables which had been stolen from the complainant's house. A number of intoxicating drugs were also recovered from the premises.

4. The learned counsel for the applicant has argued that the police did not record the statement of the owner of the house from where the women were found and the recovery effected; no memo of recovery was made; goods recovered were not identified by the complainant before a magistrate; challan was submitted after nine months; and that bail should be granted to the applicant as of right as pursuant to the Criminal Procedure (Second Amendment) Ordinance, 2006, bail could only be denied when a woman was found involved in terrorism, financial corruption, murder and offences punishable with death or imprisonment for life or imprisonment for ten years; in the alternative he argued that the applicant is a woman accused of offences the punishment of which falls within the non-prohibitory clause of section 497 Cr.P.C. and the trial has not concluded in six months.

5. Learned Additional Prosecutor General assisted by the learned counsel for the complainant argued that there was absolute no doubt that the applicant was the culprit; that the complainant's family is a respectable family and there was no reason for false implication; that recovery of the stolen goods has been effected along with the drugs used to incapacitate the complainant and his wife; that the applicant is a member of a gang which carries out home robberies through the same modus operandi which was deployed at the complainant's house; and that the learned counsel for the applicant's reliance on the Second Amendment to the Criminal Procedure Code is misplaced as the same was repealed in the year 2011.

6. I have heard all counsels and perused the record.

7. Upon a tentative assessment it appears that the complainant did not have any malafide or ill intent to falsely implicate the applicant as being the person who had drugged him and his family and stolen all valuables from the home. The complainant's version of events, prima facie, sounds true. Partial recovery of the complainants stolen valuables has been made from Zahida (also uses the name Samina) and Shakeela (also uses the name Shamim). Intoxicating medicines which were administered to the complainant couple have also been recovered from the same house. As far as the learned counsels argument that the statement of the house owner was not recorded is concerned, the investigating officer of the case

has explained that the dwellings in the katchi abadi have no record as to who the owner is but that it was these women who were in possession of the premises. The applicant has been identified by the complainant as being the same woman who had come to work at his house and he has also identified the valuables recovered as being his.

8. The tests carried out on complainant and his wife at the Dr. Ziauddin Hospital reflect that Benzodiazepines were found in their blood. Benzodiazepines are a class of drugs used for the treatment of anxiety and insomnia and include drugs commonly known as Xanax, Klonopin, Valium, Ativan and Versed. Known side effects of Benzodiazepines include drowsiness, confusion, dizziness, impaired coordination, increasing the risk of falls and accidents, depression and increased anxiety. Medical reports further reveal that the wife had to be admitted to the Intensive Care Unit of the hospital for Benzodiazepine poisoning. It appears that the drugs administered to the couple not only impaired their thinking but could have led to their death as well. Apart from the family members there was only the applicant in the house and therefore upon a tentative assessment it appears that the same were given to the complainant family by the applicant.

9. The police has also discovered that the applicant heads a gang which includes one Sartaj Ahmed, Ashiq and Shakeela. The applicant Zahida has a substantial crime record (being booked in 6 cases of a similar nature) in at least three police stations dating back from the year 2014. She has remained in jail however succeeded in being granted bail in all those cases. Apart from Zahida, co-accused Shakeela also has a crime record (being booked in 5 similar cases) ranging back to 2017.

10. As regards the learned counsel's argument that in accordance with the Criminal Procedure (Second Amendment) Ordinance, 2006, bail could only be denied when a woman was found involved in terrorism, financial corruption, murder and offences punishable with death or imprisonment for life or imprisonment for ten years, is concerned, it appears that the said amendment was repealed by the Code of Criminal Procedure (Amendment) Act, 2011 published in the Gazette of Pakistan on 21-4-2011. The learned counsel for the applicant after going through the aforementioned amendment did not stress

heavily on his argument but in any case argued that six months had passed and the trial had not concluded thus she should be granted bail. It appears that the prosecution is not solely liable for the delay and therefore I am not inclined to show any leniency on this ground.

11. It appears to be correct that the punishment for the offences with which the applicant is charged, though non-bailable, fall within the non-prohibitory clause of section 497 Cr.P.C. I am cognizant of the principles enunciated by the Honorable Supreme Court in the Tariq Bashir and 5 others vs The State (PLD 1995 SC 34) however I am of the opinion the prima facie long drawn association of the applicant with similar crimes disentitles her to bail as it appears that she continues to be involved in similar crimes after getting bail in those earlier cases.

12. In conclusion, upon a tentative assessment the prosecution appears to be in possession of sufficient evidence to prima facie establish a nexus of the applicant with the offence for which she is charged. The bail application stands dismissed.

JUDGE