

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 1200 of 2020

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Date order with signature of Judge

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For hearing of bail application.

**18<sup>th</sup> January, 2021**

Mr. Israr Ahmed Abro, Advocate for applicant.

Mr. Talib Ali Memon, APG.

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Omar Sial, J: Ahsan has sought post arrest bail in crime number 103 of 2020 registered under section 395 P.P.C. at the Pirabad police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 10<sup>th</sup> Additional Sessions Judge, Karachi West on 4-7-2020.

2. Khan Mohammad registered the aforementioned FIR on 29-3-2020 reporting an offence that had occurred earlier that day. He reported that he has a shop from where he sells mobile phones. In the early hours of the morning he was informed that a robbery had occurred in the market where his shop was. When he reached the market he was told by the watchman that 5 armed persons had come, tied him up and then proceeded to rob different shops. 8 mobile phones were stolen from Khan Mohammad's shop whereas Rs. 250,000 in cash was also taken away. Another shop owned by someone else had 7 mobile phones and Rs. 23,000 stolen; yet another shop had 74 mobiles and Rs. 210,000 stolen; another shop had Rs. 170,000 stolen; another shop had 9 mobiles and cash of Rs. 110,000 stolen; yet another shop had Rs. 450,000 and an unidentified number of mobiles stolen. A .30 bore pistol of the guard was also stolen.

3. I have heard the learned counsel for the applicant as well as the learned APG. The complainant did not effect an appearance despite notice. My observations are as follows.

4. The applicant was arrested on the statement of one Mohammad Ali Khamiso, who said that the applicant had brought a sack full of mobile phones. These admissions and confessions made require further scrutiny. Upon a

tentative assessment it appears that a stereo typed story has been used by the police to implicate the accused in these cases on the ground that recovery was effected from them. 13 persons were arrested in this crime after a phone allegedly robbed was found in the use of Komal and Ghazala. Komal and Ghazala said that they had bought the phone from one Amir. Out of these 13 persons Ghazala and Komal were granted bail as indeed were 5 others, namely, Rasool Baksh, Mukhtiar Ali, Wajid Ali, Shareefuddin and Saifudeen. On grounds of consistency, the applicant too is entitled for bail.

5. The complainant himself has recorded in the FIR that the entire mobile market was closed due to the prevailing pandemic. Indeed that seems to be the correct situation. In these circumstances, it seems rather odd that the shopkeepers of the market would leave such huge sums of money in a market which is closed.

6. There is no evidence on record, in the shape of receipts, invoices, packing lists etc. which could even prima facie show that the phones in question were imported by the allegedly affected shopkeepers. At least the IMEI's numbers of some of the phones were identified. The investigation track down the location of the phones through their IMEI's number was very weak. The only one phone recovered through tracking was in the use of Ghazala and Komal, the 2 accused who were granted bail.

7. No identification parade was held for the watchman to confirm that the applicant was one of the 5 persons who had come to rob the market. No explanation is on record for this lapse.

8. A high powered committee was constituted by the police on 2-4-2020, which had concluded that the case should be disposed of in A class. While the recommendation of the police is not binding on the magistrate, yet at this preliminary stage it does create some doubt in the prosecution case. Of course, a conclusive answer in this regard will be given after evidence is led at trial.

9. It is alleged that recovery of 55 phones was made on the pointation of the applicant. The memo of recovery made on 19-4-2020 however appears to reflect that the 3 accused jointly led the police to a house from where the alleged recovery took place. This aspect too requires closer scrutiny.

10. There appear to be a number of unanswered questions in the case that require answers before the applicant can be held guilty of the offence with which he is charged. The answers will come at trial when evidence is led. At the moment, the case of the applicant appears to be one of further inquiry.

11. Above are the reasons for the short order dated 15.12.2020.

JUDGE