

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1580 of 2020

Date order with signature of Judge

For hearing of bail application.

24.11.2020

Mr. Abdul Karim Lakhair, Advocate for applicants.
Mr. Zahoor Shah, DPG a/w ASI Saleem Raza, I.O. of the case.
Complainant Dr. Pervez Ghaffar present in person.

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Omar Sial, J: Ahmed Latif and Umer Farooq, the two applicants, have sought post arrest bail in crime number 55 of 2020 registered under sections 392, 337-A(i) and 34 P.P.C. at the Sahil police station. Earlier, their application seeking bail was dismissed by the learned 2nd Additional Sessions Judge, Karachi, South on 1.9.2020.

2. Dr. Pervaiz Ghaffar is the person who lodged the aforementioned F.I.R. on 4-6-2020 reporting an incident that had occurred earlier that day. He recorded that he was sleeping in his bedroom whereas his son and grandson's rooms were on the ground floor of the house. Ghaffar heard noise in the middle of the night and when he went out to see what was happening he saw the form of his grandson along with another person downstairs going into his son's room. Ghaffar thought that his grandson was with his son and therefore went back to his bedroom. Soon thereafter 2 men, one with a pistol and another with a screw driver barged into his room with his son (who was profusely bleeding from his head). The intruders manhandled the family members present and through sheer intimidation and threat continued to rob the family of nearly all their valuables. The intruders then made their escape good in Ghaffar's car. The car was later found (through the tracker installed in it) abandoned in a commercial area of the Defence Housing Authority. The F.I.R. was registered against 2 unknown persons, whose descriptions were given by Ghaffar to the police.

3. I have heard the learned counsel for the applicants and the learned DPG. The complainant was present in person though was not represented by a counsel. I have also heard the investigating officer of the case. My observations are as follows.

4. I have been explained the circumstances of how the applicants were arrested by the investigating officer of the case. He narrated that the police had been receiving several complaints and spy information about a suspicious rickshaw which was presumably being used in robberies by a gang of robbers. As the police was vigilant, they had stopped a suspicious rickshaw in which apart from the rickshaw driver there were two other persons present. Upon checking and interrogating the suspicious persons, the police discovered that this was the same gang of robbers against whom complaints had been received. Apparently, the modus operandi of the gang was that its members would conduct recce for a few days on potential targets for robbery and then strike when they had sufficient information. Upon further probe by the police, it was revealed that the gang may be wanted in similar offences by different police stations.

5. The learned counsel for the applicants has argued that no private witness was associated while the rickshaw was stopped; that the complainant did not submit the receipt of the robbed items; that the intruders had muffled faces; that they had no crime record; that the applicants had only been arrested because there was a pressure on the police to perform and solve this and various other similar cases; that the FIR mentions 2 persons but the police has arrested more than 4 people; and lastly that the applicants are sole bread winners of their families. He therefore prayed that they may be enlarged on bail.

6. The learned DPG has confirmed that the persons who committed the robbery had muffled faces at the time of the robbery. The complainant however submitted in court that he is absolutely sure that the arrested men are the same persons who had entered his house. He supported his belief by stating that the men had stayed in their house for a substantially long period and during this period their body language, mannerism, body built, complexion and voice had been noted by him and his family members and that it was the same as the arrested men. Further, the record reveals that a number of valuables which were robbed from his house were also recovered from the same men subsequently.

Upon a tentative assessment, I am satisfied by the statement of the complainant, which to me appeared true. There was absolutely no reason for him to falsely implicate anybody. It is only when evidence is led at trial that a conclusive finding can be given on this issue but at this stage there is evidence connecting the applicants with the offence.

7. It also appears true that the applicants did not have a crime record at the time of their arrest. However, subsequently, it is the police's view that the same gang is involved in several similarly executed incidents and that the requisite legal proceedings in that regard are underway. In any case, the mere fact that the applicants did not have a crime record at the time of their arrest cannot be the sole ground for grant of bail.

8. As regards the learned counsel's other arguments mentioned above, I do not find any force in them at the bail stage.

9. Quite a traumatic robbery has taken place; there is reasonable evidence that the arrested men are the same as the robbers; the offence carries a potential life imprisonment and thus falls within the prohibitory clause of section 497 Cr.P.C.; partial recovery of the robbed items has been effected; police foisting the recovered items appears at this stage to be remote possibility; in the circumstances of the case, there is also a possibility of the applicants absconding as well as tampering with evidence.

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

JUDGE