

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 806 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

12-05-2023

Mr. Bilawal Hussain Chandio, Advocate for applicant.

Mr. Talib Ali Memon, A.P.G.

=====

Omar Sial, J: Ghulam Mohammad alias Nana has sought post arrest bail in crime number 86 of 2023 registered under sections 397 and 34 P.P.C. at the Awami Colony police station in Karachi. Earlier, his application seeking bail was dismissed on 10.03.2023 by the learned 13th Additional Sessions Judge, Karachi East.

2. A background to the case is that the aforementioned F.I.R. was registered 30.01.2023 at 1:05 a.m. on the report of Faryaz Khan. Khan recorded that a few hours ago i.e. at 10:40 p.m. on 29.01.2023, he was at home with his family when 4 armed persons broke into the house and gathered all the valuables present. As the 4 robbers were escaping, the inmates of the house raised alarm as a consequence of which the residents of the neighborhood managed to apprehend the applicant and one other by the name of Mohammad Ibrahim. Two of their companions, namely, Azeem and Munawar, however, managed to escape with the robbed goods. Khan then reported the occurrence on 15 and soon thereafter A.S.I. Razziq Hussain came to the scene and arrested the two apprehended accused, who had apparently been beaten by the residents who caught the two.

3. Learned counsel for the applicant submitted that as the applicant is innocent and because the story is a false story the applicant should be admitted to bail. He further stressed that none of the robbed items were found from the applicant. He also was of the view that section 397 P.P.C. is not applicable and even if it was, the punishment for the offence falls

within the non-prohibitory clause of section 497 Cr.P.C. This was the extent of his argument. Learned counsel could not however provide any explanation as to why the complainant, whose house was robbed, the inmates of that house and the people of the neighborhood, who had caught the applicant, would falsely nominate the applicant as one of the robbers who broke into and robbed the complainant's house. Learned counsel could not provide an explanation as to where the applicant was at the time the robbery is said to have been committed. Learned APG fully supported the impugned order and also stated that the applicant was armed when he broke into the house and had put the inmates of the house under the fear of death, therefore, section 397 Cr.P.C. was applicable.

4. In view of the fact that the applicant, along with one of his colleagues, was apprehended immediately after the robbery and was identified by the complainant there and then, I am not inclined to admit the applicant to bail. The fact that no malafide or ill-intent of the police or the complainant has been argued nor, upon a tentative assessment, if any borne out of the record, it appears that the nexus of the applicant with the crime complained of, upon a tentative assessment, is established. This would not mean that the applicant is necessarily guilty of the offence. That will be determined after evidence is led at trial and it is determined whether the evidence presented in court is of such a nature that would indicate that the applicant is indeed guilty of the offence.

5. As regards the learned counsel's argument that section 397 P.P.C. is not applicable, there might be some weight in his argument. The reason I observe this is that while the complainant stated that all the 4 robbers were armed with lethal weapons, it seems that the weapons were not seized by the residents who apprehended the applicant and one of his colleagues. While applicability of section 397 P.P.C. will be determined by the learned trial court after it has had the opportunity to review evidence produced at trial, even if the punishment of the offence falls within the non-prohibitory clause of section 497 Cr.P.C., I am not inclined to show any leniency on this account alone. I am cognizant of the principles enunciated in the Tariq

Bashir and 5 others vs The State (PLD 1995 SC 34) and am of the view that the alleged act of the applicant in which he violated the privacy of a home, threatened and scared the inmates of the house, which included small children, falls within the exceptional circumstance (as envisaged in the Tariq Bashir case) in which bail can be denied in a non-bailable case but where the punishment falls within the non-prohibitory clause of section 497 Cr.P.C.

6. Above are the reasons for the short order dated 10.05.2023.

JUDGE