

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No. 73 of 2023

Applicant : Arsalan
through Mr. Khuda Dino Sangi, Advocate

Respondent : The State
through Mr. Abrar Ali Khichi, Addl.P.G.

Date of short order: 18th May, 2023

Date of reasons : 29th May, 2023

ORDER

Omar Sial, J: Arsalan Dayo is nominated accused in F.I.R. No. 18 of 2023 registered under sections 380, 457, 454 and 34 P.P.C. at the Sahil police station. He was admitted to post arrest bail by the learned 5th Judicial Magistrate, Karachi South on 07.02.2023. On 27.02.2023, the learned 12th Additional Sessions Judge, Karachi South cancelled the bail granted earlier. Dayo has challenged the bail cancellation order through these revision proceedings.

2. I have heard the learned counsel for the applicant and the learned Addl.P.G. None appeared for the complainant despite notice. In fact it was noted that the address given by the complainant, and which is on the record of the trial court, was a false address given by the complainant. This fact in itself does not reflect well on the bonafide of the complainant.

3. The learned trial judge was primarily swayed by the fact that the order passed by the learned Magistrate on 07.02.2023 was erroneous, factually incorrect and resulted in miscarriage of justice. With much respect I am not inclined to agree with the learned Additional Sessions Judge. The learned judge has perhaps been a little harsh to shoot down the order of the learned Magistrate on the ground that it was "erroneous, factually incorrect and resulted in miscarriage of justice". On the one hand the

learned Additional Sessions Judge was of the view that the print of one little finger of the applicant was found on a slip. This the learned judge considered to be a new ground and thus the reason for the cancellation of bail. It seems that the learned judge acknowledged that the material he commented on was not brought to the attention of the learned Magistrate. If this was correct then how could the learned Magistrate be held responsible of passing a factually incorrect order? A perusal of the record shows that the learned Magistrate had passed his order on 07.02.2023 and the fingerprint report was brought forward in court on 09.02.2023. Even otherwise, finding the print of one little finger of the applicant on an item in the house of the complainant would not be something out of the blue as it is an admitted fact that the applicant had remained in the employment of the complainant. It was sheer suspicion of the complainant that his ex-employee had committed theft in his house. No recovery was made and there was no complaint from the prosecution that the applicant had not co-operated in the investigation. I further tend to agree with the reliance of the learned Magistrate on Tariq Bashir and 5 others (PLD 1995 SC 34) to support his position that there were no exceptional or extraordinary grounds to deny the applicant bail in a case where the offences with which he is charged were non-bailable but the punishment of which fell within the non-prohibitory clause of section 497 Cr.P.C.

4. No tampering with evidence, a past criminal record, apprehension of the applicant committing the crime again or being a flight risk has been agitated by the State. In these circumstances, the impugned order is set aside and the applicant re-admitted to post arrest bail.

5. Above are the reasons for the short order dated 18.05.2023.

JUDGE