

ORDER SHEET  
**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-440 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>16.05.2023</u>	For hearing of main case.
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Mr. Abdul Rasool Abbasi, advocate for applicant.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

**Amjad Ali Sahito, J:-** Through instant bail application, the applicant/accused namely, Ali Asghar seeks post-arrest bail in Crime No.25/2023 for the offence under section 489-B, 489-C PPC registered at Police Station A-Section, Dadu, District Dadu. Earlier, the bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-II, Dadu vide order dated 20.04.2023.

**2.** The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

**3.** Learned counsel for the applicant has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case. Per learned counsel, from the fact of FIR, it appears that on the spy information that four persons are present near Qalandari hotel Dadu having fake currency notes. He further added that the complainant did not disclose how the names along with their parentage of the accused he knew presently and previously. He further added that during investigation one accused namely Shahid alias Shahoo was released by the police but subsequently, he was joined by the learned Magistrate and said Shahid was admitted to bail by the learned Additional Sessions Judge-II, Dadu. He further contended that for the sake of arguments, if it is believed that currency notes were not in the hands of applicant/accused, how the spy came to know that the fake currency notes are in his pocket. Learned counsel for the applicant/accused further contended that there is violation of section 103 Cr.P.C. despite so many people usually remain present in the Qalandari hotel i.e. place of incident. He further contended that the applicant/accused is in jail, he is no more required for further investigation, as such, his case is fit for further inquiry. Lastly, he prayed for grant of bail to the applicant/accused.

4. On the other hand, learned A.P.G. Sindh has opposed the grant of bail to the applicant/accused and contended that after recovery of fake currency notes, the same were sent to the State Bank of Pakistan and received report in positive. However, she has admitted that co-accused namely Shahid alias Shaoo has been granted bail by the learned trial Court.

5. Heard and perused.

6. Admittedly, the place of incident is stated to be at near Qalandari Hotel, Dadu where usually people remain present but not a single person is associated to see the recovery proceedings despite fact that the complainant had prior information of the possession of fake currency notes with the applicant/accused, which *prima facie* appears that the complainant has violated the requirement of section 103 Cr.P.C. From perusal of record, it further reflects that the complainant ASI Qurban Ali himself has recorded the statements under section 161 Cr.P.C. as such, he has investigated the matter himself. In fact, complainant and Investigation Officer are two opposing parties. It is not the duty of Investigation Officer to establish the prosecution or complainant case but it is his duty of discover the truth from the entire story of complainant party. I am of the view that the critical and essential responsibility of Investigation Officer demands that he should not be affiliated to or member of any party of a criminal case especially in the cases of recoveries by complainant himself. Further, it is also a question as to how the spy came to know the names of accused even, *prima facie*, it is not believable that how he came to know about the currency notes to be fake and no such connection in the investigation has come out to believe that the applicant/accused was in possession of fake currency notes. The applicant/accused is behind the bars and no purpose would be served to detain him in incarceration for an indefinite period keeping in view that if after long run if he is acquitted of the charge, nothing will bear his liberty or compensate. Further, it is well-settled principle of law that at the bail stage only a tentative assessment is to be made, as such, the observation made in the instant case will not prejudice the case of either party being tentative in nature for the purpose of bail only.

7. In view of the above facts and circumstances, learned counsel for the applicants/accused has made out the case for further inquiry as envisaged in subsection 2 of section 497 Cr.P.C. Consequently, the applicant/accused is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and PR bond in the like amount to the satisfaction of learned trial Court.

8. It is made clear that if the applicant after getting bail will not appear before the trial Court and the trial Court is satisfied that the applicant becomes absconder and fugitive to law, then the trial Court is fully competent to take every action against the applicant/accused and his surety including cancellation of bail without referring to this Court.

JUDGE

\*Abdullah Channa/PS\*