

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Applications No. 793 & 868 of 2023

Applicant in Cr. : Sadam Hussain s/o. Ghulam Hyder,
B. Appl. No. 793/2023 through Mr. Ameenuddin Khaskheli, advocate

Applicant in Cr. : Naqeebullah s/o. Muhammad Essa,
B. Appl. No. 868/2023 through Mr. Fateh Muhammad, advocate

Respondent : The State, through Mr. Hussain Bakhsh Baloch,
Additional Prosecutor General.

Complainant : Raftullah s/o. Daleel Badshah
through Mr. Aftab Ahmed Malik, advocate

Date of hearing : 26.06.2023
Date of order : 26.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of above listed both Criminal Bail Applications as the same, being arisen out of F.I.R. No. 109/2023, registered at P.S. Gadap City, Karachi under sections 395, 397, P.P.C. have been heard by me together.

2. Applicants/accused Sadam Hussain s/o. Ghulam Hyder and Naqeebullah s/o. Muhammad Essa through listed Cr. Bail Applications, respectively, seek post-arrest bail in aforesaid crime. Their first application for the same relief bearing No. 1002 of 2023 was dismissed by the learned Assistant Sessions Judge-II, Malir Karachi, vide order dated 20.03.2023, whereafter they preferred their second Criminal Bail Application bearing No. 1314 of 2023, after submission of the challan, which was too dismissed by the learned Sessions Judge, Malir Karachi, vide order dated 05.04.2023.

3. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 10.03.2023 at 04:00 a.m. near Shell Petrol Pump situated between Kathor and Bahria Town, Main Superhighway, Karachi five unknown accused persons duly armed with deadly weapons, robbed cash of Rs. 9,000/- and Mazda Truck bearing

Registration No. TAL-829 from the complainant party, for which aforementioned F.I.R. was lodged against the un-known accused persons.

4. Learned counsel for the applicant Sadam Hussain contends that the applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives; that no description of the accused persons is mentioned in the F.I.R.; that there is inordinate delay of 14/15 hours in lodging the F.I.R. for that no plausible explanation has been furnished by the complainant; that nothing incriminating has been recovered from possession or pointation of the applicant; that the applicant is serving in Police Department and posted at CIA Center Naushahro Feroze, who alongwith other officials recovered in Kazi Ahmed City Petrol Tankers, bearing Registration Nos. TLG-329, TUB-765, C-2054, TLF-528 and C-1672, owned by one Habibullah Shawani, which were filled with Irani petrol, while the present complainant is Manager of said person; however, complainant and other 6/7 persons maltreated the applicant and other officials and abducted and kept them initially under wrongful confinement at Hab Baluchistan; thereafter, they lodged this false F.I.R.; that the guilt of the applicant requires further inquiry entitling him to bail. In support of his contentions, learned counsel relies upon the cases of *Shehzore and another v. The State* (2006 YLR 3167), *Muhammad Anis v. The State* (2009 YLR 301), *Nazir Ahmed and another v. The State* (2012 YLR 1085), *Qurban Khan v. The State* (2014 YLR 1593), *Samiullah v. The State* (2020 MLD 1466), *Atta Muhammad v. The State* (2020 P.Cr.L.J. 1221) and *Ghulam Nabi and 2 others v. The State* (GBLR 62).

5. Learned counsel for the applicant Naqeebullah, while adopting the arguments of learned counsel for the applicant Sadam Hussain, maintains that the applicant has falsely been implicated in this case by the police with mala fide intention and ulterior motives otherwise he has nothing to do with the alleged

offence nor there is any direct or indirect evidence against him; that the applicant is a police official posted at C.I.A., Centre, Naushero Feroze, who alongwith other officials seized many times illegal Gutka/Mawa in huge quantity and illegal diesel of one Imam Bux Zardari, who was also a police official; however, due to ill deeds, he was dismissed and owing to which he is on inimical terms with the applicant and other police officials; that on 10.03.2023 at about 03:00 a.m. the applicant was coming back to his native city Naushero Feroze from Karachi, he stayed at Usmania Hotel for taking tea, when said Imam Bux Zardari along with his 5/6 persons reached there, they beat him and forcibly handed him over to complainant, who falsely involved him in the instant case; that the guilt of the applicant requires further inquiry entitling him to bail. In support of his contentions, learned counsel has relied upon the case of *Muhammad Salman v. The State* (2016 YLR Note 4).

6. On the other hand, learned counsel for the complainant as well as Addl. P.G vehemently oppose this application on the grounds that the applicants are involved in a heinous offence and from their possession robbed vehicle of the complainant has been recovered; that sufficient evidence is available with the prosecution to connect the applicants with the commission of alleged offence; hence, they are not entitled to the concession of bail.

7. Heard, record perused.

8. It appears that the alleged F.I.R. was recorded by the complainant on 10.03.2023 at 1830 hrs. for the alleged robbery of cash of Rs. 9,000/- and Mazda truck. The applicants were arrested on the very next day on being found in their possession the alleged robbed Mazda truck. The applicants were identified by the complainant against whom no enmity has been claimed by them. The prosecution witnesses have fully implicated the applicants in commission of alleged offence in their 164, Cr.P.C. statements. Applicants' claim with regard to their false

implication on the instance of their so-called rivals, namely, Habibullah Shawani and Imam Bux Zardari is an issue that cannot be attended without going beyond the scope of tentative assessment, an attempt prohibited by law.

9. No doubt, offence under Section 397, P.P.C. being carrying punishment with imprisonment for not less than seven (07) years does not fall within the prohibitory clause of section 497 Cr.P.C., while offence under Section 395, P.P.C. carries punishment for imprisonment for a term which shall not be less than four years and more than ten years. There is no cavil to the proposition that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the statute for the charged offence but the one which is likely to be entailed; however, in such like cases, the accused cannot claim bail as a matter of right.

10. It may be observed that the offences like robbery/dacoity are frequently reported to have been committed without any restriction in urban and rural areas, which are not only creating scare among the people but ruining the safety of the life and property of law abiding citizens and also generating sense of insecurity amongst public at large.

11. From the tentative assessment of the evidence on record, it appears that the prosecution has sufficient evidence against the applicants to connect them with the commission of alleged offence; therefore, they are not entitled to concession of bail; hence, I reject this criminal bail application.

12. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE