

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Applications No. 864 & 887 of 2023

Applicants in Cr. Bail : Shaman Ali s/o Fateh Ali & Haider Khan
Application No. 864/2023 s/o Ghulam Qadir, through M/s. Mehtab Ali
Soomro and Mumtaz Ali Narejo, advocates

Applicant in Cr. Bail : Babal @ Babar s/o Hayat, through
Application No. 887/2023 Mr. Abrar Hussain, advocate

Respondent : The State, through Mr. Syed Meeral Shah,
Additional Prosecutor General.

Complainant : Muhammad Dilawar s/o Ferozuddin, through
Mr. Muhammad Lateefuddin, advocate

Date of hearing : 21.06.2023
Date of order : 21.06.2023

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. 132/2023, registered at P.S. Ferozabad, Karachi under section 397/34, P.P.C., have been heard by me together.

2. Applicants/accused Shaman Ali s/o Fateh Ali & Haider Khan s/o Ghulam Qadir and Babal @ Babar s/o Hayat, respectively, through listed Cr. Bail Applications seek post-arrest bail in aforesaid crime. Earlier their applications for the same relief bearing No. 1660 & 1487 of 2023 were dismissed by the Court of Additional Sessions Judge-XIV, Karachi-East vide orders, dated 11.04.2023 and 01.04.2023, respectively.

3. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 15.02.2023 during 1950 hours to 2015 hours, from House No. 40, Dar-ul-Aman Society, Road No. 04, Block 03, Ferozabad, Karachi four unknown accused persons duly armed with deadly weapons, robbed gold ornaments, wrist watches, 2400 Riyal, PKR 150,000/- and a car. After investigation, police submitted the Charge Sheet against the accused persons for the offences under section 397/34 r/w 395/109, P.P.C.

4. Learned counsel for the applicants Shaman Ali and Haider Khan has contended that the applicants are innocent and they have falsely been implicated in this case by the police with malafide intention; that no specific role has been attributed to the applicants in the commission of alleged offence and allegations against them are general in nature; that no direct or indirect evidence is available with the prosecution to connect the applicants with the commission of alleged offence; that nothing incriminating has been recovered from the possession or pointation of the applicants and the alleged recovery of the robbed car on the pointation of applicant Shaman Ali is fake; that the applicants have been arrested in the alleged offence on the basis of the statement of co-accused Babal while in police custody, which is inadmissible under the law and, thus, the guilt of the applicants requires further inquiry entitling them to the concession of bail.

5. Learned counsel for the applicant Babal has argued that the applicant is innocent and has falsely been implicated in this case by the I.O., as he refused to fulfill his illegal demand; that nothing incriminating has been recovered from the possession of the applicant; that the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C.; that the applicant is behind the bars since day of his arrest and the guilt of the applicant requires further inquiry.

6. On the other hand, learned Addl. P.G. has vehemently opposed these applications on the grounds that sufficient evidence is available with the prosecution to connect the applicants with the commission of alleged offence. Learned counsel for the complainant has; however, not opposed the grant of bail to applicant Babal on the ground that he is an old servant of the complainant and he has falsely been implicated by the I.O. and in this regard, the complainant has also filed an Affidavit.

7. It appears from the perusal of the record that on the alleged day of the incident Shayan and Ms. Laiba, the son and daughter of the complainant, were

present in the house when four unknown accused entered the house. They tied the hands of Shayan. Ms. Laiba and their domestic servant Zahid and one accused made them sit on the strength of weapon, while other started taking out gold ornaments, wrist watches, 2400 Riyal, PKR 150,000/- from the *almirahs* and then they took away the same with them in a Vitz car of the complainant bearing Registration No AKF-500. The CCTV recording showed that the accused came in a rickshaw, who were identifiable by the said son of the complainant. During investigation, on 21.02.2023, the I.O of the case interrogated applicant Babal @ Babar, the cook and driver of the complainant, who allegedly disclosed that on the instigation of Abid Ali and Sabir Ali, both sons of Fateh Ali Leghari, he committed dacoity in the house along with six co-accused persons, out of them applicants Shaman Ali and Haider Khan were arrested 24.02.2023; later, on 04.03.2023, allegedly on the pointation of applicant Shaman Ali police recovered the robbed car from an open plot near Bakri Petrol Pump, Bilal Colony, Karachi after about 17 days of the alleged incident.

8. It also appears that though it is alleged in the F.I.R. that the accused persons are identifiable if they appear before the son of the applicant, yet no identification parade has been held to testify that the applicants Shaman Ali and Haider Khan were among those accused, who had committed dacoity in the house of the complainant. It is also an admitted fact that the faces of the said applicants are not recognized in CCTV recording. Even, nothing is available with the prosecution to establish their presence inside or outside the house on the alleged day of the incident. They have been implicated in the case on the basis of the statement of applicant/co-accused while in police custody which is inadmissible under Article 39 of the Qanun-e-Shahadat Order, 1984. Moreover, the complainant is himself not satisfied at all for the alleged implication of his servant, the said applicant/co-accused. So far alleged recovery of the robbed car is concerned, it is an admitted position that the same has not been affected from physical possession of any of the

applicants but was found lying abandoned at the place of recovery after seventeen days of the alleged incident.

9. Under the facts and circumstances discussed above, the guilt of the applicants requires further inquiry as envisaged under subsection (2) of Section 497, Cr. P.C. The applicants are behind the bars since the day of their arrest. Police has already submitted the Charge Sheet against them; hence, they are no more required by the police for further investigation. Accordingly, by allowing instant applications, I admit the applicants to post-arrest bail in aforesaid crime/offence subject to furnishing by them solvent surety in the sum of Rs.2,00,000/- (*Rupees Two Lac only*) each and PR bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicants on merits and if applicant(s) in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

11. Above are the reasons of my short order, dated 21.06.2023.

JUDGE

Athar Zai