

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 456 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

For hearing of bail application.

14-04-2023

Mr. Jawed Ahmed Rajput, Advocate for applicant.
Mr. Talib Ali Memon, APG a/w complainant.

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Omar Sial, J: Hayat Ali has sought post arrest bail in crime number 640 of 2022 registered under sections 392, 397 and 34 P.P.C. at the Saeedabad police station in Karachi. Earlier, his application seeking bail was dismissed by the learned 31.01.2023 by the learned 1st Additional Sessions Judge, Karachi West.

2. A background to the case is that the aforementioned F.I.R. was registered on 22.12.2022 on the complaint of one Asad Khan. Khan reported that earlier that day he, on his motorcycle, had gone to collect a payment from a certain person at a specified address. As soon as he got to the house, 2 persons on a motorcycle appeared from behind and on the show of weapons forcibly snatched Khan's motorcycle. Upon Khan's resistance, a round was fired by one of the 2 boys, which hit the complainant on his shoulder. The assailants then left their motorcycle behind and rode away on the complainant's motorcycle.

3. Learned counsel for the applicant has argued that the applicant was not involved in the present crime but that he was arrested from his house and falsely nominated in the case; no identification parade was held; that the person who fired the shot was not the applicant and finally that the applicant was a juvenile. The learned APG supported the impugned order. I have heard the counsels. My observations and findings are as follows.

4. It appears to be correct that the no identification parade was held for the complainant to recognize the applicant after his arrest. The complainant, present in court during these proceedings, however

categorically submitted that he had seen the applicant while in police custody, and had confirmed to the police that the applicant was the same boy who had shot at and injured him. In view of the identification made by the complainant and the fact that no malice or malafide has been attributed to him, at this preliminary stage, I am not satisfied that sufficient grounds exist to dispute the complainant's statement.

5. I have looked at the ground of juvenility raised by the learned counsel with some attention. A copy of the applicant's birth certificate is on file which reflects that the applicant was born on 08.09.2005 which would make him about 17½ years. An offence under section 392 carries a punishment of 10 years whereas a section 397 offence carries a sentence of up to not less than 7 years. According to the Juvenile Justice System Act, 2018 the prescribed punishment would make the offence fall within the ambit of what is termed a "heinous offence" in the Act. Section 2(g) of the Act stipulates that:

(g) "heinous offence" means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force with death or imprisonment for life or imprisonment for more than seven years with or without fine;

Section 6(4) of the Act provides that *"Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence."* If one looks at the definition of "heinous" one sees that for an offence to be categorized as heinous, the offence should have 2 limbs:

- (i) it should be gruesome, brutal, sensational in character or shocking to public morality; and
- (ii) it should carry a potential sentence of death or imprisonment for life; or of imprisonment of more than 7 years with or without fine.

6. It seems clear that as the offences with which the applicant is charged carry punishments of more than 7 years and thus the second limb of

whether an offence is heinous or not is satisfied. It is the first limb where I am satisfied to conclude that at this preliminary stage it is safe to conclude that the offence allegedly committed by the applicant would not categorize as “gruesome”, “brutal” or “sensational in character”. It is however debatable whether the alleged acts of the applicant fall within the ambit of “shocking to public morality.” Robert P. George in the American Journal of Jurisprudence 45:1 (2000). Reprinted in Craig Steven Titus (ed.), *The Person and the Polis* (Institute for the Psychological Sciences Press, 2006) has opined that: “Public morality, like public health and safety, is a concern that goes beyond considerations of law and public policy. Public morals are affected, for good or ill, by the activities of private (in the sense of “nongovernmental”) parties, and such parties have obligations in respect to it. The acts of private parties-indeed, sometimes even the apparently private acts of private parties-can and do have public consequences. And choices to do things that one knows will bring about these consequences, whether directly or indirectly (in any of the relevant senses of “directly” and “indirectly”) are governed by moral norms, including, above all, norms of justice. Such norms will often constitute conclusive reasons for private parties to refrain from actions that produce harmful public consequences.” It appears to me that the act of the applicant would in all probability fall within the definition of “public morality”, but whether the same can be categorized as “shocking to public morality” could generate mixed views. I have taken the view most favorable to the applicant at this bail stage.

7. Solely for the reason that the applicant is a juvenile, according to the birth certificate put on record, the applicant is admitted to bail subject to his furnishing 3 solvent sureties to be taken from 3 different persons, in the sum of Rs. 100,000 each to the satisfaction of the learned trial court.

JUDGE