

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1999 of 2023

Applicant : Javed Akhtar
through Mr. Kanwar Altaf Bhatti, Advocate
alongwith applicant

Respondent : The State
through Mr. Muhammad Iqbal Awan, Addl.P.G.

Complainant : through Mr. Sameer Hussain Samo, Advocate

Date of hearing : 23rd October, 2023

Date of order : 25th October, 2023

ORDER

Omar Sial, J: Javed Akhtar has sought pre-arrest bail in crime number 771 of 2023 registered under sections 392, 452, 354, 365, 342, 506-B, 337-A(i) and 34 P.P.C. Earlier on 06.09.2023, the learned 5th Additional Sessions Judge, Malir has dismissed the bail application filed before that court.

2. On 03.07.2023, Daud Khan provided information about an incident on 19.06.2023, which formed the basis of the F.I.R. mentioned above. Daud reported that in the early hours of the morning of 19.06.2023, a police party of the Anti-Vehicle Lifting Cell, consisting of eight persons, which also included the applicant, raided their house and did not behave civilly with the residents. They took with them the younger brother of the applicant (Mohammad Saleh alias Shamroz Darbagi) with them. Saleh returned home within 12 hours of the incident and alleged that he was maltreated while in detention.

3. The learned counsel for the applicant has not denied that an AVCLC police party had gone to apprehend Mohammad Saleh. They had done so on the credible information which had linked Mohammad Saleh's phone with a case of car snatching. The learned counsel for the complainant, while not denying that a SIM inserted in the phone of his brother was connected with a car snatching case, defended his position by saying that his brother

had lost his phone earlier and that the SIM in question was never re-issued as it was in the name of a lady in the interior of Sindh. The truth can only be deciphered at trial when evidence is led. Fortunately, Mohammad Saleh is home, having been released by the police after finding him not involved in the car snatching case that it was investigating.

4. It is pertinent to note that no effort was made by the police party to hide its identity or decline to inform the family where Mohammad Saleh was being taken and for what reason. The police were performing their duties as the information they received about a SIM (inserted in Saleh's phone) being used in a car robbery case does not appear to be baseless. The police also released Saleh from detention when they discovered that Saleh was not involved in the incident. Learned counsel for the complainant argued that how Saleh was picked up and maltreated was improper and that the applicant was liable. I completely agree with the learned counsel; however, these are issues that require a deeper appreciation of evidence, and the learned trial court will be in a better position to decide the same. The injuries to Mohammad Saleh, photos of which were shown to this Court, are superficial and have been categorised as falling within the ambit of section 337-A(i) P.P.C. This is classified as a bailable offence. No evidence exists now that the police party also stole valuables and money. This allegation requires further inquiry, and keeping the anger and hostility of the complainant's family at what they perceive as a brazen abuse of police power, exaggeration in the F.I.R., cannot be ruled out. There are indications of the police not having acted professionally; however, I am not inclined to demoralise the force at this bail stage based on a tentative assessment of the evidence on the police file. If the learned trial court, at the end of the trial, believes that the applicant is guilty of the offences he is charged with, no leniency should be shown in the sentence.

5. The interim pre-arrest bail granted to the applicant is confirmed on the same terms and conditions. S.S.P. AVLC should be sent a copy of this order so that he can ensure that all officers working under his command act in accordance with the law.

JUDGE

