

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 2170 of 2023

Crl. Bail Application No. 2171 of 2023

Applicants : Hider Ali and Naeem
through M/s. Muhammad Daud Narejo &
Muhammad Yousif Narejo, Advocates

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

Complainant : through M/s. Imran Khan, Mehboob Ali Chandio &
Bakhat Ali Langah, Advocates a/w complainant

Date of hearing : 19th October, 2023

Date of order : 24th October, 2023

ORDER

Omar Sial, J.: Haider Ali and Naeem have sought post-arrest bail in crime number 22 of 2023, registered under sections 392, 397, 109 and 34 P.P.C. at the Malir Cantt. police station. The learned Sessions Judge Malir and learned 4th Assistant Sessions Judge, Karachi Malir, dismissed their bail applications on 08.04.2023 and 07.06.2023 respectively.

2. The F.I.R. in the case was lodged on the information provided by Mohammad Iftikhar Khan on 16.01.2023. Khan reported that his uncle called him on the phone while he was at work and asked him to come home immediately. When Khan reached his home, his wife told him that four armed men had forced their way into the house and looted the family of Rs. 100,000 and the gold jewellery they had. Khan cast suspicion on the maid Shazia.

3. Learned counsel for the applicants has argued that the case is a false one; Shazia was the real culprit; the applicants are not named in the F.I.R.; the wife of the complainant gave no description of the intruders; the applicants were picked up by the police on 18.03.2023 and his father had filed a section 491 Cr.P.C. application before the learned Sessions Judge,

Malir; the applicants were arrested in another case (F.I.R. No. 139 of 2023) under the arms legislation and ostensibly confessed to the present crime as well. Learned Additional Prosecutor General passionately resisted the grant of bail. The complainant was also present in person.

4. I have heard the learned counsel for the applicant and the learned Additional Prosecutor General. My observations and findings are as follows.

5. In most cases, it is given that the person being looted or robbed would not know the name and parentage of the perpetrators. Learned counsel's argument in this regard is without any merit. It is also incorrect that the complainant's wife did not describe the accused. She did, albeit a vague description was given. In the situation in which an ordinary, simple and domesticated lady and her children were put, the fact that she did not precisely mention the features of the intruders should not be permitted to form the basis for the grant of bail. It is pertinent to point out that after the applicants were arrested, an identification parade was held in which both the applicants were identified by the complainant's wife. Learned counsel argues that the identification parade was defective as the learned magistrate used the same dummies to identify both applicants, albeit in separate parades. It may very well be, but at this stage, to delve into the propriety of the identification parade would amount to a deeper analysis of evidence. After reviewing the evidence at trial, the learned trial court will be better positioned to determine this issue. On a tentative assessment, the record reflects that an identification parade was held and that the complainant's wife, who was present and witnessed the incident, identified the applicants.

6. The complainant and his wife appear to be decent middle-class people. The contents of the F.I.R., upon a tentative assessment, have a ring of truth. Learned counsel was repeatedly asked why the complainant's wife would falsely nominate his clients, but he could not give any reason. The record also shows that the looted jewellery was recovered at the pointation of the applicants.

7. Above are the reasons for which, upon a tentative assessment, I had concluded through a short order dated 19.10.2023 that there is sufficient evidence at the moment to decline the applicants' prayer that they be enlarged on bail.

JUDGE