

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2583 of 2023

Date

Order with signature of Judge

For hearing of bail application

11.12.2023

Mr. Badar Hussain advocate for the applicant
Nemo for Complainant
Mr. Talib Ali Memon, Assistant PG

Through this bail application under Section 497 Cr.P.C., the applicant Zahid Hussain has sought admission to post-arrest bail in F.I.R No.426/2023, registered under Section 395/34 PPC, lodged at Police Nazimabad Karachi. The earlier bail plea of the applicant has been declined by the learned III Additional District Sessions Judge (Central) Karachi vide order dated 06.11.2023 in Criminal Bail Application No. 2761/2023 on the premise that the applicant/accused was arrested by the Rizvia Police and at the time of such arrest the mobile phone of the complainant was recovered and the complainant identified the applicant/accused at the police station so also he identified his robbed mobile phone.

2. The accusation against the applicant is that on 03.10.2023 he along with their accomplice robbed the complainant of Rs. 34640/- and other valuables and fled away from the spot, such report of the incident was lodged at P.S Nazimzbad on 04.10.2023, where the complainant saw the applicant confined in the police lockup; where the police disclosed his name finally the complainant identified the accused.

3. Learned counsel for the applicant/accused mainly contended that the applicant/accused has been falsely implicated in this case; that the present applicant is not named in the FIR as the complainant lodged the instant FIR against the unknown culprits whose features and descriptions are not mentioned in the FIR; learned counsel further argued that the police in their abortive attempt has shown the recovery of one RelMe Cell phone whereas the complaint has disclosed his cell phone in the F,I, R as Samsung besides police has also shown arrest of the applicant in the Police Lockup where the complainant was directed to lodge F.I.R against the applicant on the same day, which was done and the applicant was shown to the complainant inside the Police Lockup which was/is against the criminal justice system. Lastly, it is submitted that the

applicant/accused has been behind bars since his arrest in the aforesaid crime without his fault. He prayed for allowing the instant bail application.

4. Learned APG appearing on behalf of the State has argued that all the PWs have implicated the applicant/accused in the commission of the offense. He has opposed the bail application on the premise that there is no ill will on the part of the complainant and the police. He prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the material available on the record.

6. Tentative assessment of the record reveals that the applicant along with their accomplice robbed the complainant of Rs. 34,640/- and other valuables and fled away from the spot, such report of the incident was lodged at P.S Nazimzbad on 04.10.2023 when the complainant reached police station where he in saw the applicant confined in the police lockup; where he identified him, where police disclosed his name to the complainant. Prima facie the police in their abortive attempt have shown the recovery of one RelMe Cell phone from the applicant as per Mashirnama dated 4.10.2023, whereas the complainant has disclosed his cell phone in the FIR as Samsung this contradictory stance is alarming and fatal to the case; besides police has also shown arrest of the applicant in the Police Lockup where the complainant lodged F.I.R against the applicant on the same day and thereafter the applicant was shown to the complainant inside the Police Lockup which was/is against the criminal justice system.

7. It is well-settled law that the process of identification parade has to be carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an unchangeable ritual, inconsequential non-performance whereof, may result in failure of the prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on the case of *Tasar Mehmood v. The State* (2020 SCMR 1013). Even otherwise, it is settled law that holding of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in Court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, then even the non-holding of the identification parade would not be fatal for the prosecution case. Reliance is placed on *Ghazanfar Ali v. The State* (2012 SCMR 215) and *Muhammad Ali v. The State* (2022 SCMR 2024). However, in the present case, the name of the applicant has been disclosed in the FIR, where the complainant made his appearance at the police station where he saw the applicant confined in the lockup on the premise that they were arrested by the police in another case, and after

their purported arrest, they were shown to the complainant to identify the accused, inside the police lockup which is prima facie violate of terms of Article 22 of the Qanun-e-Shahadat Order, 1984.

8. In FIR Section 39 PPC has been applied. Section 391 PPC provides that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity". The punishment under Section 395 is that whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to a fine. Section 393 PPC pertains to an attempt to commit robbery which is punishable with R.I for a term that shall be extended up to 07 years whereas Section 397 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than 07 years.

9. Keeping in view the punishments provided in the above Section and the facts and circumstances discussed supra it is well settled that while deciding the bail application lesser sentence out of an alternate sentence may be taken into consideration for determining whether the case falls under the prohibitory clause of Section 497(1) Cr. P.C., I am of the tentative view that the case of the applicants requires further inquiry. Besides the alleged offenses do not fall within the prohibitory clause of Section 497(1) Cr.P.C.

10. Prima facie the Court while hearing a bail application is not required to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. Reliance on the aforesaid proposition is placed on the case of *Jamaluddin alias Zubair Khan versus the State* (2012 SCMR 573).

11. Keeping in view the facts and circumstances of the case, prima facie, the case against the applicant/accused requires further inquiry as contemplated under subsection (2) of Section 497 Cr.P.C., Applicant Zahid Hussain is admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (two hundred thousand Rupees), and P.R bond in the like amount to the satisfaction of trial Court. The learned trial Court is directed to expedite the trial and examine the complainant within one month and if the charge is not framed the same shall be framed on the next date of hearing positively.

JUDGE