

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. S – 274 of 2023.

Date	Order with signature of Judge
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For Hearing of Bail Application.

12-06-2022.

Mr.Manzoor Hussain N. Larik Advocate for applicant.
Mr.Zulifqar Ali Jatoi Addl.P.G.

ORDER.

AMJAD ALI BOHIO, J. After the dismissal of his bail application, the applicant sought his bail after arrest in connection with the case FIR No. 48/2023 registered at Kotdiji Police Station, District Khairpur. The applicant has been charged under Section 382 of the PPC. Meanwhile, a report (Challan) has been submitted under Section 173 of the Cr.P.C for the offense committed under Section 395 of the PPC.

2. The allegation against the applicant/accused, as well as his co-accused Sajid, Nadir, Ayub, Suhrab, and an unknown person, is that they were armed with pistols and committed the theft of 03 coils from a Transformer, valued at Rs.30,000/-, and electric wires valued at Rs.10,000/- from a Government Tube well.

3. The learned counsel for the applicant has argued that the applicant has been falsely implicated in the present case. The investigation has already been concluded, and the applicant is no longer required for further investigation. Initially, the FIR was registered under Section 382 of the PPC, but later Section 395 of the PPC was added with malicious intent. This addition occurred because the applicant's brother, Imdad Ali, had filed a Criminal Miscellaneous Application No.1410 of 2022 before the Ex-officio/Justice of Peace/Sessions Judge, Khairpur on 18.03.2023. In paragraphs 3 and 4 of that application, allegations were made regarding apprehension at the hands of police officials to implicate him and his family members. The applicant has also submitted a Certified True Copy of that application along with the bail application, and this fact has not been denied by the Additional Prosecutor General. The stolen property has been falsely

attributed to the applicant due to enmity with the police. Finally, the counsel prays for the grant of bail, citing the cases of Fazal Ellahi and another v The State (2004 S C M R 235) and Riaz Jafar Natiq v Muhammad Nadeem Dar and others (2011 S C M R 1708) as precedents.

4. The learned Additional Prosecutor General (Addl.P.G) representing the State has opposed the bail application and argued that the applicant was identified at the time of recovery, which establishes sufficient evidence linking him to the commission of the offense. It is mentioned that two stolen wires were recovered from his possession based on his disclosure. Therefore, the Addl.P.G contends that the bail application should be dismissed.

5. Heard and perused the record.

6. The record reveals that the complainant specifically mentioned in the FIR that the applicant, along with the co-accused, had stolen the aforementioned articles. However, during the investigation, the investigating officer (I.O) did not collect any evidence to substantiate the applicant's involvement in the offense under Section 395 of the PPC. Therefore, the addition of Section 395 of the PPC solely based on the opinion of the Deputy Public Prosecutor (D.P.P) is a matter that requires further inquiry.

7. There are allegations of malice against the police, suggesting that they may have falsely attributed the stolen property to the applicant due to the filing of the aforementioned Criminal Miscellaneous Application by his brother just three days before the applicant's involvement in this case. In that application, his brother expressed concerns about the police implicating his family members in false cases as they refused to pay monthly bribes to the police. These allegations raise sufficient doubts regarding the applicant's commission of the offense.

8. Furthermore, it has been established that the prosecution has to prove its case beyond reasonable doubt, and even at the bail stage, the benefit of doubt can be extended, as held in the case of ***Fahad Hussain Vs. The State (2023 S C M R 364)***, which states:-

“The perception and discernment of the expression “further inquiry” is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The raison d'etre of setting

the law into motion in criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.”

9. Based on the aforementioned considerations, the present bail application is granted. The applicant is granted bail on the condition that they provide a solvent surety amounting to Rs.50,000/- (Rupees Fifty Thousand) and a Personal Recognizance Bond of the same amount, to the satisfaction of the trial court.

10. It is important to note that the observations made in this decision are of a tentative nature and shall not have any bearing on the merits of the case.

J U D G E

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