

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Appln. No. S – 94 of 2023.

CrI. Bail Appln. No. S – 122 of 2023.

CrI. Bail Appln. No. S -123 of 2023.

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

Dated of hearing: 13.06.2023

Mr.Aftab Hussain Shar Advocate alongwith applicant Nazeer in CrI.B.A.No.S- 94 of 2023.

Mr.Mujahid Hussain Rajput Advocate for applicant Khalid Hussain in CrI.B.A.No.S- 122 of 2023.

Mr.Shamshad Ahmed Siyal Advocate for applicant Nazar Muhammad alias Gudi in CrI.B.A.No.S- 123 of 2023.

Mr.Rab Dino Makwal Advocate for complainant.

Mr.Shafi Muhammad Mahar DPG.

ORDER.

AMJAD ALI BOHIO, J:- Applicant Nazeer, son of Mir Hassan Jagirani, is seeking pre-arrest bail through this bail application. Additionally, applicants Khalid Hussain, son of Sher Muhammad Mughal, and Nazar Muhammad, also known as Gudi or Nazeer Hussain, son of Imam Bux Manganhar, are seeking post-arrest bail. These bail applications are in relation to Crime No. 328/2022, registered at Police Station Shaheed Murtaza Mirani, District Khairpur. The offense for which they are seeking bail was initially registered under Section 394, P.P.C. However, following the investigation, the report under Section 173 Cr P C was submitted for offenses under Sections 397, 337A(i), and F(i), P.P.C.

2. The brief facts, as stated in the FIR lodged on November 30, 2022, at 19:00 hours by the complainant Ashique Ali, are as follows:

On November 26, 2022, at 00:30 hours (midnight), the complainant, along with his son Kamran and his sister's son Aijaz Ali, were returning to their house in Muhalla Bhurgari on foot after having tea with friends. At that time, four culprits, namely Khalid Hussain, son of Sher Muhammad Mughal, Nazir Hussain, also known as Guddi, son of Imam Bux Manganhaar, Akhtiar, son of Bakhtiar Jagirani, and Nazir, son of Mir Hassan Jagirni,

approached them. These culprits were armed with weapons and were identified by the light of a torch. The culprits proceeded to rob the complainant of Rs. 275,000 in cash, while PW Kamran Ali had his Oppo mobile phone taken from him. Aijaz Ali also had his Oppo mobile phone and Rs. 2500 in cash stolen. When the victims resisted, Khalid Hussain and Nazir Hussain, alias Guddi, struck them with the butts of their pistols, causing bleeding injuries to the complainant. At this point, the culprits fled upon noticing people who were drawn to the commotion caused by the victims' cries for help.

3. Learned counsel for the applicants/accused have made the following submissions:

(i) They argue that the ingredients of Section 397, P.P.C indicate that the said provision applies when grievous hurt is caused. However, it is admitted that the injuries sustained by the complainant fall under Section 337A(i) and F(i), which are of a simple nature. Therefore, it is contended that the police misapplied Section 397, P.P.C, which requires further investigation.

(ii) The complainant received medical treatment for two simple injuries falling under Section A(i) and F(i). The FIR was lodged by the complainant with a four-day delay, for which no plausible explanation has been provided in the FIR, especially considering that the complainant was examined as an outpatient. Upon reviewing the FIR, it is evident that the accused were already known to the complainant, and that is why he nominated them. The complainant has provided specific roles attributed to each accused in committing the alleged robbery, and the source of identification mentioned in the FIR was torchlight. However, it is noted that the said torchlight was not produced, which is considered the weakest form of identification according to a precedent that is not mentioned.

4. The learned counsel for the applicant, Khalid Hussain, has submitted a certified true copy of a Criminal Miscellaneous Application No. 670/2022 u/s 491 Cr.P.C filed by Abdul Jabbar, the real brother of the applicant/accused Khalid Hussain. The application was filed on November 30, 2022, before the Court of Sessions Judge/Ex-officio Justice of Peace, Khairpur. It is worth noting that the application was filed during court hours on the same day, while the FIR in the current case was lodged on November 30,

2022, at 19:00 hours, with the incident date mentioned as November 26, 2022. This creates doubt regarding the timing and accuracy of the FIR.

5. Learned Deputy Prosecutor General (DPG) for the State and Counsel for the complainant have opposed the above bail applications and have contended that the accused/ applicants are nominated in the F.I.R., who also caused injuries to the complainant and have robbed cash as well as two mobile phones of Oppo Company. The robbed cash of Rs.20,000/- and Rs.10,000/- was also recovered from accused/applicant Nazir alias Guddi and Khalid respectively, therefore, they are not entitled for concession of bail.

6. After hearing both parties and reviewing the record, the following points have been noted:

(a) The learned counsel for the applicants has argued that there was a delay of four days in lodging the FIR after the incident, and the complainant has not provided a plausible explanation for this delay. It is also contended that the identification of the culprits based on torchlight, as mentioned in the FIR, is considered the weakest form of identification according to precedents set by superior courts.

(b) The complainant alleged the robbery of two mobile phones, but he has failed to provide the phone numbers of even a single mobile phone since the filing of the FIR until today. This raises the contention, raised by the learned counsel for the applicants, that the implication of the accused may be based on political grounds.

(c) It is worth noting that a CrI. Misc. Application No.670 of 2022 under Section 491, Cr.P.C was filed on the same day as the registration of the FIR, i.e., on November 30, 2022, while the FIR itself was lodged at 19:00 hours (evening time) on the same day which creates doubt.

7. It is observed that Initially, the FIR was registered for the offense under Section 394, PPC, which carries a punishment of not less than four (04) years and not more than ten (10) years. However, during the investigation, the learned Deputy Prosecutor General (DPG) states that, based on the opinion of the Director of Public Prosecutions (DPP), Section 397, PPC was added. I would like to reproduce Section 397, PPC as follows: Please provide the text of Section 397, PPC that you would like to include.

“397.Robbery or dacoity, with attempt to cause death or grievous hurt. If, at the time of committing robbery or dacoity,

the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years."

8. The learned Deputy Prosecutor General (DPG) has conceded that the injuries sustained by the complainant at the time of the alleged incident were not of a serious nature as envisaged under the provisions of Section 397, PPC. Therefore, it is acknowledged that further inquiry is required in the matter.

9. It is a settled principle of law that the benefit of doubt can be extended at the bail stage, as established in the case of ***Fahad Hussain v. The State (2023 SCMR 364)***. It is not necessary for multiple circumstances to create doubt. Reliance is placed on the case of ***Tariq Pervez v. The State, reported as (1995 SCMR 1345)***, where it was held as follows:

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

10. Based on the circumstances discussed above, it is determined that the case against the applicants/accused requires further inquiry and, therefore, they are entitled to the concession of bail. As a result, accused Nazeer, who is currently on interim pre-arrest bail granted on February 9, 2023, is liable to furnish a surety bond in the sum of Rs. 50,000/-. The earlier interim bail granted to him was subject to the condition of furnishing a surety in the sum of Rs. 30,000/-. Consequently, his interim pre-arrest bail, subject to furnishing the aforementioned surety, stands confirmed.

11. Accused Khalid Hussain and Nazar Muhammad alias Gudi, who are currently in custody, are granted post-arrest bail subject to the condition of furnishing a surety bond in the sum of Rs. 50,000/- each. The surety bonds should be in the form of P.R. Bond and must be provided to the satisfaction of the trial court.

11. Needless to mention here that the observations made here-in-above are tentative in nature and would not cause prejudice to the case of either party at the trial.

12. Office is directed to place a signed copy of this order in the captioned connected matters.

JUDGE

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