

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. B.A. No. 1272 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

25.07.2023

Mr. Abid Akram, Advocate for the applicant.

Mr. Faheem Hussain Panhwar, DPG.

SIP Shah Latif Panhwar, P.S. Memon Goth, Karachi

1 Applicant Amanullah @ Danish son of Ghulam Rasool is seeking bail after arrest in FIR No. 121/2023 lodged under Section 392,397, 34 PPC at P.S. Memon Goth, Karachi.

2. The allegation against the applicant/accused is that on 24.04.2023 at about 06:30 p.m. he in conjunction with other malefactors committed robbery/dacoity

3. It is inter alia contended by the learned counsel for the applicant/accused that applicant/accused is not named in the FIR and this sole fact is sufficient which casts a heavy doubt in the prosecution story, therefore, this benefit is to be given to the applicant/accused at bail stage. While concluding his submission, learned counsel requested for releasing the applicant/accused on bail.

4. On the other hand, learned DPG contended that applicant/accused has committed a heinous offence and the same is not bailable, therefore, the bail plea be declined.

5. I have heard the submissions of learned counsel for the applicant as well as learned APG and scanned the available material. It is an admitted fact that applicant/accused is not named in the FIR.

Furthermore, the FIR was lodged after the delay of 3 days and the prompt FIR is necessary to set the criminal law into motion. The prosecution established its case that the applicant/accused was nabbed in another FIR No.122/2023 and during the course of interrogation the applicant/accused confessed his guilt. It is settled principle of Qanun-e-Shahdat Order, 1984¹ that confession made by an accused person while in police custody is not admissible², therefore, the case of the applicant/accused needs further probe. Furthermore, it has not been introduced on record that a judicial confession of applicant/accused has ever been recorded by the learned Judicial Magistrate. 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 warrant³. 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

¹ Per Article 37.

² 2001 P.Cr.L.J 86

³ Per *Muhammad Ali Mazhar J. in Fahad Hussain v. The State (2023 SCMR 364)*

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.

6. I have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

7. As a result therefore, this bail application is allowed. Applicant Amanullah @ Danish son of Ghulam Rasool is granted bail subject to furnishing solvent surety in the sum of Rs.20,000/- (rupees twenty thousand) with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

8. Before parting, I would like to further observe that if the applicant after getting bail fails to appear before the trial Court and the trial Court is satisfied that the applicant has misused the concession of bail and became absconder then the trial Court is fully authorised to take every action against the applicant and his surety including cancellation of the bail without making a reference to this Court.

JUDGE

Aadil Arab