

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1090 of 2023

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<b>Date</b>	<b>Order with signature of Judge</b>
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For hearing of bail application

**06.7.2023**

Mr. Sajjad Ali Bhutto, advocate for the applicants  
Mr. Muntazir Mehdi, Additional PG  
Mr. Muhammad Daud Narejo, advocate for the complainant  
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**ORDER**

The applicants Babul Ali son of Iqbal, Suhrab Ali son of Arbab Ali and Ali Jan son of Allah Baksh seek post-arrest bail in FIR No.261/2023 for offenses under Sections 397/109/34 PPC of Police Station Awami Colony Karachi. Their earlier bail application No.2153/2023 was rejected by the learned XII-Additional District & Sessions Judge Karachi East vide order dated 13.05.2023 on the premise that reasonable grounds exist to believe that the applicants have committed the alleged offense.

2. It is, inter-alia, contended by the learned counsel for the applicants that the case as narrated in the FIR is false and managed by the management of Adil Flour Mill. He further submitted that the learned trial Court failed and neglected to look into the basic ingredients of Section 397 PPC, which is not a substantive offense under the law. He next argued that the prosecution has improved the case subsequently by inserting Section 392 in the report under Section 168 Cr.P.C. Learned counsel emphasized that the FIR is against unknown persons, however, the applicants have been booked by the management of the Flour Mill on the premise that they were/are in connivance with the main culprits and attempted to show alleged recovery of cash from the applicants as the FIR is silent on the subject point. Per learned counsel, nothing has been recovered from the applicants; however, it has been shown with malafide intention to stop the union activities in the Flour Mill. Learned counsel further submitted that no specific role in snatching the case has been attributed to any of the applicants in the FIR. Learned counsel pointed out that the complainant has nothing to do with the aforesaid incident and he is the attorney of the Mill just to lodge the FIR. Learned counsel submitted that the applicants were arrested on 10.04.2023 but the police produced them in Court on 18.04.2023 as such their custody in between the period was illegal as the

police was in active connivance with the management of the Flour Mills. He emphasized that 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 the doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant. He further submitted that the applicants are entitled to the concession of bail in the aforesaid crime

3. Learned APG assisted by learned counsel for the complainant has opposed the bail application on the ground that the applicants informed the complainant about the offense of robbery who had exclusive knowledge of secret drawers of the truck which were not easily traceable and designed for the safe custody of cash thus without their connivance and assistance the alleged assailants/robbers could not have been able to locate such secret drawers which fact prima-facie suggest the involvement of the applicants in the commission of the offense. Learned counsel submitted that applicant Babul is the driver and Suhrab is the conductor who during the interrogation admitted their guilt and led the police party to the recovery of the partially robbed amount of Rs.770,000/- from the house located adjacent to the Mubarak decoration Sharifabad KIA. He further pointed out that the applicants disclosed the names of their accomplices and they were also arrested who admitted their guilt and led the police party to the recovery of the further robbed amount of Rs.100,000/- and the pistol used by the accused in the commission of the offense. Learned counsel emphasized that Article 40 of the Qanoon-e-Shahadat is also attracted in this situation. He prayed for the dismissal of the bail application.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. Tentative assessment of record reflects that the applicants initially were charged with an offense punishable under Section 397 PPC, this section provides that 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.

6. In the present case, prima-facie the applicants were not possessing the alleged deadly weapon at the time of the alleged incident, rather it is the case of applicants that they informed the management of the Adil Flour Mill about snatching of the money by unknown persons, however, their story was no believed by the management and they were shown to have been arrested in the subject case and alleged recovery was

subsequently effected from them, in such circumstances, it is for the trial Court to see whether basic ingredients of Section 397 PPC are attracted or otherwise.

7. So far as subsequent added alleged offense under Section 392 PPC in the charge sheet does not fall in the prohibitory clause of Section 497 Cr.P.C.

8. Additionally, in the absence of any features of the co-accused having been set out in the FIR, and without their prior identification, it is not understandable as to how the complainant laid blame on the applicants accused to the effect that they allegedly robbed the cash and /or were instrumental to such robbery, however this aspect of the case needs to be looked into by the trial Court by recording evidence of the complainant and Investigating officer. For the reason that the complainant in the F.I.R. just informed the Police that the applicants' connivance in such robbery at the hands of unknown assailants had been made, who might have disclosed the secret drawers of the truck. Besides, the complainant has just blamed the two unknown persons including the present applicants that were/are involved in the robbery of cash from truck.

9. As for the recovery alleged to have been made from the applicants, suffice it to observe that trial will look into this aspect as to how the alleged recovery was made from the applicants when they were already under detention at Police Chowky with effect from 10.4.2023. Prima-facie, under peculiar circumstances of the case, such a recovery can easily be planted. It has repeatedly been held by the Superior Courts that even at the bail stage, the benefit of the doubt is to be resolved in favor of the accused. At the same time, bail cannot be withheld as a punishment. All these features of the case of the prosecution call for further inquiry into the guilt of the accused within the meaning of Section 497 Cr.P.C., moreover, there is nothing on record that the present applicants were previous convicts or they have remained indulged in any other identical case in the past.

10. From the facts and circumstances of the present case, whether it is a case of alleged / simple robbery or otherwise, this can only be resolved and determined by the trial Court after a full-fledged trial of the case. Consequently, this bail application is allowed and the applicants are admitted to post-arrest bail in the aforesaid crime, subject to their furnishing solvent surety in the sum of Rs.50,000 (Rupees fifty thousand only) each and P.R bond in the like amount to the satisfaction of the learned trial Court.

11. Before parting with this order, it is observed that the observations made in this order are tentative and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, if applicants/accused during proceedings before the trial Court, misuse the concession of bail, then the trial Court would be competent to cancel the bail of the applicants / accused without making any reference to this Court.

12. These are the reasons for my short order dated 06.7.2023 whereby the applicants were allowed post-arrest bail in the aforesaid crime.

JUDGE

Zahid/\*



