

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

Criminal Bail Application No.1114 of 2023

Date	Order with signature of Judge
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For hearing of bail application

18.7.2023

Mr. Manzoor Hussain Khoso, advocate for the applicants
Mr. Siraj Ali Khan, Additional PG alongwith SI Gul Faraz, PS Iqbal Market, Karachi

Through this bail application, the applicants / accused have assailed the order dated 30.3.2023, whereby their bail application was rejected by the learned III-Additional Sessions Judge Karachi West in Sessions Case No.57 of 2023.

2. The accusation against the applicants as per F.I.R is that on 25.10.2022, they in connivance with their accomplices entered into the house of the complainant and committed robbery of cash amount of Rs.3950/- It is alleged that the people of the vicinity gathered in front of the house of the complainant and started shouting. The accused attempted to escape from the place of the incident, however, were arrested by police at the spot. They disclosed their names as Moazzam, Madad Ali, and Abid Hussain, they all were equipped with different kinds of weapons, and cash was also recovered from them, such report of the incident was lodged with PS Iqbal Market, Karachi on the same day.

3. Learned counsel for the applicants / accused has contended that the applicants / accused are innocent and they have been falsely involved in the instant case; that nothing has been recovered from their possession and that the weapon and alleged amount has been foisted upon them by police at the instance of complainant, hence no case against them is made out; that police has failed to record the statement of any of the private witness from the vicinity. It is further contended that neither any specific role has been attributed to the applicants nor any recovery has been made from them. He further submitted that mushirnama of recovery and arrest is undated; that co-accused has been admitted to bail by the trial court, therefore the rule of consistency is fully applicable in the instant case, hence the matter requires further inquiry. He added that recovery of the alleged pistol violates section 103 Cr.P.C. He lastly prayed for allowing the instant bail application.

4. Learned Additional PG assisted by the complainant has opposed the bail plea of the applicant on the ground that the accused are nominated in the FIR and they were caught red-handed from the place of occurrence along with arms and ammunition when they were escaping after committing robbery from the house of the complainant Muhammad Hashim and police reached the spot and apprehended the culprits. He further contended that during their search, unlicensed weapons were recovered from their possession including cash of Rs.3950/-. He next argued that there is no ill will on the part of the complainant and police to book the applicants falsely. He next argued that the accused are involved in a gang of criminals who entered the house of innocent people with deadly weapons and after making them hostage used them to rob them. He further submitted that the applicants / accused are involved in many cases, such as the criminal record of the applicants / accused. He further submitted that the prosecution has collected sufficient material to connect them with the alleged crime. He lastly contended that the FIR has been lodged promptly, thus the applicants / accused are not entitled to concession of bail.

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

6. Applicants were arrested by the police when they were allegedly fleeing from the place of incident after committing robbery from the complainant and at the time of their arrest, not only alleged pistols but robbed cash were also recovered from them. Insofar as the ground that recovery of the alleged pistol violates section 103 Cr. P.C. is concerned, learned APG has pointed out that recovery was witnessed by the independent person, therefore, this ground, at this stage is not available to the applicants. More so, under Sindh Arms Act, 2013, strict compliance with section 103 Cr. P.C. is not provided.

7. The other contention of the learned counsel is that in the memo of recovery, no mark of identification of the alleged recovered pistol is shown, suffice to say that this cannot be considered as ground to release the applicants on bail for the reason that the trial court is required to thrash out the evidence and if it is found that the case of the applicants is managed by the complainant and police the trial court would be at liberty to grant them bail, however, that is subject to availability of evidence of the complainant and I.O. in negative. And more so, the memo of arrest and recovery shows that necessary details regarding the recovery of the pistol have been given therein. Prima-facie, sufficient material connecting the applicants with the offenses is available on record.

8. The offense under sections 392 and 397 PPC are heinous offenses, which is against the society at large and cannot be taken lightly, therefore, there are reasonable grounds to believe that the applicants/accused along with co-accused have committed the alleged offense as described in the FIR. At the bail stage, only a tentative assessment is to be made and nothing has been brought on record to show any ill-will or *malafide* on the part of the complainant. All the P.Ws have supported the version of the complainant as such sufficient material is available on the record against the applicants/accused to connect them with the alleged offenses.

9. In view of the above, applicants/accused have failed to make out a good case for grant of post-arrest bail in the light of sub-section (2) of Section 497 CrPC.

10. In such circumstances, the instant Criminal bail Application stands dismissed. However, the learned trial court is directed to examine the complainant positively within one month if the charge is not framed the same shall be framed on the next date so fixed by the trial court and proceed with the matter accordingly. Such report of the progress shall be submitted to this court without fail.

11. Needless to mention that the observations made hereinabove are tentative and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

