

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1668 of 2023

Date	Order with signature of Judge
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For hearing of bail application

21.8.2023

Syed Shabbir Hussain Shah advocate for the applicant
Mr. Abrar Ali Khichi, Additional PG

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.468/2022, registered under Section 380/454 PPC at Police Station Malir City. The earlier bail plea of the applicant has been declined by the learned Sessions Judge (Malir) Karachi vide order dated 21.07.2023 in Cr. Bail Application No. 3193/2023.

2. The accusation against the applicant is that on 23.05.2023 he committed theft in the house of the complainant and took away Rs.10,000/- and other valuable articles; and on the same day, such report of the incident was lodged with Police Station Malir City under Section 380/454 PPC, however, the complainant came to know that one suspect had been caught by *mohalla* people and his subsequent arrest had also been shown in the aforesaid crime by police on 31.5.2023, which lead to recovery of theft articles.

3. The applicant is not nominated in FIR, however, his arrest has been shown by *Madadgar* 15 police on 31.5.2023, wherein it is alleged that the complainant identified him, whereas the complainant in his 161 Cr.P.C. statement has disclosed that the applicant was arrested by *mohalla* people. This major change in the prosecution story creates doubt about whether the applicant was the same person who allegedly committed theft in the house of the complainant as no identification parade has taken place and nobody had seen the applicant while committing theft, which could only be determined by the trial Court. The offense, with which the applicant stands charged for Section 380 PPC, carries maximum punishment of up to 07 years; hence, does not exceed the limits of the prohibitory clause of Section 497 Cr.P.C.

4. In the circumstances and because of the dicta laid down by the Supreme Court of Pakistan in the case of *Tanveer v. The State and another* (PLD 2017 SC 733), the case against the applicant requires further inquiry

within the meaning of sub-section 2 to Section 497 Cr.P.C. Consequently, application in hand is hereby allowed; and the applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.50,000/- and PR Bond in the like amount to the satisfaction of the learned Trial Court.

5. Before parting with this order; however, it is clarified that the reasoning given in this order is tentative in nature and will have no effect whatsoever in any manner upon the merits of the case.

JUDGE

Shahzad/*