

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.475 of 2023

Date	Order with signature of Judge
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For hearing of bail application

15.8.2023

Mr. Maroof Hussain Hashmi advocate for the applicant
Mr. Zahoor Shah, Additional PG alongwith Inspector/SIO Muzaffar Ali,
PS Iqbal Market Karachi

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No. 07/2023, registered under Section 399/402/34 PPC, lodged at Police Station Iqbal Market Karachi. The earlier bail plea of the applicant has been declined by the learned Sessions Judge XI Karachi (West) vide order dated 07.02.2023 in Criminal Bail Application No.509/2023.

2. The accusation against the applicant is that on 17.01.2023 he along with his accomplices prepared to commit robbery, on such information, police apprehended the applicant and on his search, one 30-bore pistol was recovered. Such a report of the incident was lodged with P.S Iqbal Market on 17.01.2023 under Section 399,402 and 34 PPC.

3. It is inter-alia contended by the learned counsel that the prosecution received prior information for the presence of the accused, however, they failed to associate the witnesses from the locality. Learned counsel has argued that the applicant has not committed robbery or dacoity and he has been arrested on account of suspicion and subsequently weapon was foisted upon him, so he is entitled to be released on post-arrest bail. He next argued that Section 399 deals with preparation for committing dacoity, while Sections 400 and 401 PPC, deal with the persons belonging to a gang of dacoits and thieves, however not an iota of evidence is on the record to show previous involvement of the applicant in any case of dacoity or theft, therefore, the applicability of the above Sections of law is yet to be determined during the trial. He prayed for a grant of post-arrest bail to the applicant. In support of his contention, he relied upon the case of Abdul Zubair vs. The State

1997 SCMR 966, *Allah Ditta alias Dittu vs The State* 1996 P. Cr. L.J 1970 and *Amir Ali Khan vs. The State*. 1994 P. Cr. L 576

4. Learned APG assisted by Inspector/SIO Muzaffar Ali, PS Iqbal Market Karachi has opposed the bail plea of the applicant on the ground that FIR was lodged without delay; that specific role has been assigned to the applicant who was found in possession of 30 bore pistol and one motorcycle was recovered from his possession; no enmity has been shown to the police; that sufficient material is available against the applicant to connect him with the crime; that police officials are good witnesses like others; that Section 399 PPC carries punishment for up to 10 years; that the crime is against the society. He prayed for the dismissal of his bail application.

5. I have considered the matter carefully and tentatively assessed the record with prima-facie show a case under Section 23-A(1) of the Sindh Arms Act, 2013 for the recovery of an unlicensed 30-bore pistol has separately been registered against the applicant. Primarily, the main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society, if there is an apprehension of repetition of offense or commission of any other untoward act by the accused. Therefore, to make the case of an accused person fall under the exception to the rule of grant of bail in offenses not covered by the prohibitory clause of Section 497(1) CrPC, the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail.

6. Tentative assessment of the record shows that for convicting the accused under the aforesaid Sections of the PPC, the number of the persons assembled to commit dacoity shall not be less than five, but in the instant case, the number of the accused found in the F.I.R was/is four. In the present case, none has been robbed. There is no independent witness to the alleged incident. The case has finally been challaned. There is no apprehension of tampering with evidence on the part of the applicant.

7. This being the position, the question of whether the applicant is guilty of offenses punishable under Section 399/402, P.P.C., requires further inquiry as contemplated under Section

497(2) Cr.PC. Therefore concession of bail is extended to the applicant/accused subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and P.R bond in the like amount to the satisfaction of trial Court.

8. Needless to say that the observations made in this order are tentative and shall not influence the trial Court while concluding the case. The learned trial Court is to expeditiously proceed with the trial under law, and in case of abuse or misuse of the concession of bail by the applicant, including causing a delay in the conclusion of the trial, the prosecution may approach the competent Court for cancellation of bail under Section 497(5), Cr.P.C.

JUDGE

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