ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail No. 1568 of 2023

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application.

29.08.2023

Mr. Liaquat Ali Khan advocate for the applicant
Mr. Talib Ali Memon, Assistant PG

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Through the instant bail application, the applicants Imran and Waqas have approached this Court for post-arrest bail in FIR No. 275/2023 registered for offenses under Section 397/34 PPC of P.S Awami Colony Karachi.

2. The accusation against the applicants as per FIR No. 275/2023 under Section 397 and 34 PPC is that on 17.4.2023, they along with their accomplices committed robbery from the house of the complainant and snatched mobile phones and cash amount.

3. Learned counsel for the applicant has submitted that the applicants /accused are innocent and have falsely been implicated in this case. He next argued that though the accused were allegedly apprehended at the spot neither the robbed articles nor any weapons were recovered from their possession. He next argued that neither the name of the security guard, who opened fire on the accused persons available in the instant FIR nor the said security guard made as mashir of the incident, which makes the case of the applicants one of further inquiry. Learned counsel emphasizes the purity of administering justice, if gets polluted due to erroneous decisions or extraneous considerations, the litigants are likely to lose faith in courts. He next argued that in the present case, the bail refusal orders passed by the trial Court suffer from perversity and call for interference from this Court. It is further contended that the alleged offense of 397 Cr. P.C is not made out, whereas the offense under Section 392 PPC has not been applied in such circumstances no case against the applicant could be registered under Section 397 PPC independently, however, the subject offense does not fall in Prohibitory Clause of Section 497 Cr.P.C. Per learned counsel, the applicants have a prima-facie good case to be released on bail.

4. The learned APG has submitted that though notices have been issued to the complainant and investigating officer they are called absent in such circumstances SSP concerned was directed to procure their attendance however today is the same position. He also opposed the bail application of the applicants and argued that the applicants were arrested red-handed on the spot. He next

argued that robbed articles were lost due to a rush of people. He next submitted that the offense mentioned in the FIR is against society and has been increased day by day, therefore the applicants at this stage are not entitled to bail.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. The applicants are charged with an offense punishable under Section 397 PPC, which carries imprisonment of up to seven years. The point, that requires consideration at the bail stage, is that as to whether there is material in the case is sufficient to refuse bail to the applicants under Section 397/34 PPC. It shall be advantageous to reproduce Section 397 PPC herein below:-

> "***397. Robbery or dacoity, with attempt to cause death or grievous hurt****. 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.*"

7. The tentative assessment of the record reflects that on the alleged date, time, and place two alleged culprits, who were armed with a deadly weapon, robbed the complainant namely Saqib Ahmed Khan but the record is silent to the aforesaid effect, neither it has been shown that the applicants were armed with a weapon nor alleged robed articles had been shown in the memo of the arrest of the applicant. Additionally, an unknown private security guard came to the place of the incident in a vehicle and one of them fired upon one of the applicants who sustained firearms injury on his body, and they fled from the scene even though they could not be investigated by the Investigating officer, which is apathy on the part of the investigating officer. In such circumstances, bail cannot be refused to the applicants as a matter of punishment, however, at the same time, I am also cognizant of the fact that the persons involved in the commission of offenses of robbery or dacoity are usually the professional criminals and there is a likelihood that they would repeat the offense if enlarged on bail. But the case of the present applicants are on different footings, in the present case, it appears from the record that nothing was recovered from the possession of the applicants when they were allegedly arrested from the place of the incident, and the allegations embodied in FIR, prima facie, show that they were empty handed then the question arises as to how a person could commit such heinous offense without force of weapon; besides the purported robed articles were allegedly lost by the complainant during alleged happening as portrayed by the complainant in the crime report/ his statement under section 161 Cr. P.C; and, were/are no longer available with the prosecution to substantiate the allegations leveled by the complainant to attract the penal provision of Section 397 PPC. During the investigation, the prosecution

has applied in FIR Section 397 PPC. Whereas Section 393 PPC pertains to an attempt to commit robbery which is punishable with R/I for a term that shall be extended up to seven years, whereas Section 397 PPC provides the punishment for an attempt to commit robbery or dacoity when armed with deadly weapons for which the accused shall be punished not less than seven years, however, the prosecution was only bother to invoke Section 397 PPC without corresponding offense. It is well settled that while examining the question of bail, the Court has to consider the minimum aspect of the sentence provided for the alleged offense. Since there is no recovery in the present case however all the aspects of the case shall be taken care of by the trial Court.

7. Going ahead on the subject, there is no cavil to the proposition that courts, by the very purpose of their creation, are required to do justice. The expression "justice" in its broadest sense, is the principle that every individual must receive, which he deserves according to law. Justice is a notion described as the constant perpetual will to allot to every man what is due to him. Every criminal wrong must be reciprocated with procedural stringency and penal consequences. However, courts, even at the bail stage, are not bound by the provisions of law applied in the FIR rather have to see the offence applicable from the contents of the prosecution case. Additionally, it is also a well-settled principle of law that mere heinousness of offense is no ground to reject the bail plea. The basic concept of bail is that no innocent person's liberty is to be curtailed until and unless proven otherwise.

8. The essential prerequisite for the grant of bail by sub-Section (2) of Section 497, Cr.P.C. is that the Court must be satisfied based on the material placed on record that there are reasonable grounds to believe that the accused is not guilty of an offense punishable with death or imprisonment for life. The condition of this Clause is that sufficient grounds exist for further inquiry into the guilt of the accused, which would mean that the question should be such, that has nexus with the result of the case and can show or tend to show that the accused was not guilty of the offense with which he is charged.

9. Primarily, grant or rejection of bail is a discretionary relief but such discretion should be exercised fairly and judicially. The word discretion when applied to Court means sound discretion judiciously guided by law and to lessen the hardship of the people.

10. For what has been discussed above, prima facie the applicants have made out a case for further inquiry into their guilt within the meaning of Section 497(2), Cr.P.C. Consequently, this bail application is allowed and the applicants are allowed post-arrest bail subject to their furnishing bail bonds 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.

JUDGE

Shahzad