

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

Criminal Bail Application No.1720 of 2023

Date	Order with signature of Judge
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1. For order on office objection at 'A'
2. For hearing of bail application

31.8.2023

Mr Javed Ahmed Rajput advocate alongwith Ms. Gulnaz Kausar advocate for the applicant

Mr. Talib Ali Memon, Assistant PG along with complainant Abdul Jabbar

Through this bail application under Section 497 Cr. P.C., the applicant has sought admission to post-arrest bail in F.I.R No.310/2023, registered under Section 392/397/511 and 34 PPC at Police Station Surjani Town, Karachi. The previous bail was declined by the Additional Sessions Judge-III (West) Karachi in Cr. Bail Application No.3523/2023 vide order dated 21.7.2023 on the premise that this Court has earlier dismissed the bail application No.1426 of 2023 of the applicant as not pressed vide order dated 17.7.2023.

2. The accusation against the applicant as narrated in the crime report is that on 05.4.2023, he in connivance with his accomplices attempted to rob the complainant by taking the goats and sheep from the place/thalla and on his hue and cry the *mohalla* people gathered there and they attempted to run away, however, peoples captured two of the accused and started threshing out them; that police arrived at the place of incident and complainant took them to the police station and got registered the aforesaid case against the applicant/accused on 06.4.2023.

3. The applicant being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicant has been falsely implicated in the case. He has contended that there is no specific role assigned by the complainant to the applicant/accused and no details of the goats and sheep are mentioned in the FIR. He has contended that the place of incident is a thickly populated area but no private witnesses associated with the said incident which is a clear violation of Section 103 Cr. P.C. He has next contended that there are reasonable grounds existed to believe that the applicant/accused has not committed any offense as alleged by the complainant or which does fall within the prohibitory clause of Section 497 Cr. P.C. Learned counsel argued that offense under Section 397, P.P.C. carrying punishment with imprisonment for not less than seven (07) years does not fall within the

prohibitory clause of Section 497 Cr.P.C., while offense under Section 392, P.P.C. carries punishment for imprisonment for a term which shall not be less than three years and more than ten years and offense under Section 511, P.P.C. carries punishment with imprisonment for a term which may extend to one-half of the longest term of imprisonment provided for the offense. He added that the Court while hearing a bail application is not to keep in view the maximum sentence provided by the Statute for the charged offence but the one which is likely to be entailed lesser punishment. He further submitted that no recovery has been made from the applicant, and even the alleged goats and/or sheep have not been shown as case property, thus the question of an alleged attempt to rob the goats and/or sheep has become insignificant and in absence of crime weapon and case property no case is made out against the applicant. Learned counsel emphasized that this is a case of an attempt to commit robbery and the prosecution has made the recourse to Section 511 PPC along with enabling provisions of PPC, which caters to such like situation, according to which whoever attempts to commit an offense punishable by Pakistan Penal Code with imprisonment for life or imprisonment, or to cause such an offense to be committed, and in such attempt does any act towards the commission of the offense, shall, where no express provision is made by the Pakistan Penal Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offense, for a term which may extend to one-half of the longest term of imprisonment provided for that offense or with such fine as is provided for the offence, or with both. The longest term of imprisonment provided for the offenses under Section 397, P.P.C. carrying punishment with imprisonment for not less than seven (07) years. One-half years comes to 3 and half years, which also does not fall within the prohibition contained in section 497(1) Cr. PC. He lastly prayed for allowing the bail application.

4. Learned Assistant P.G. has opposed the bail application and states that the learned trial Court has rightly dismissed the fourth bail plea of the applicant. It has been contended that the applicant is specifically nominated in the crime report. He next submitted that it is a settled principle of law that in such cases the statement of the complainant is sufficient for proving the charge against the accused; therefore, he does not deserve any leniency by this Court in an attempt to commit robbery. He prayed for the dismissal of the bail application.

5. The complainant present in Court has narrated his ordeal and submits that they have settled their differences outside the Court upon the intervention of their elders; in this regard, he has filed his affidavit of no

objection, which is duly sworn in by him in office and attached with the bail application. He, therefore, submits that he has given the affidavit sworn in by him, and the applicant may be released on bail.

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

7. Per FIR, the applicant along with the co-accused had allegedly attempted to rob the complainant; however, after his arrest, nothing incriminating has been shown to have been recovered from him. The main piece of evidence against him is that he was allegedly picked up by the complainant from the crime scene and brought to Police Station Surjani Town, Karachi, and his case was registered against him where the co-accused disclosed his identity, however, no identification parade was held before the Magistrate. The complainant, who is himself a victim, has raised his no objection through the affidavit duly sworn in by him in office.

8. An important question arises in the present case, as to whether based on the affidavit of the complainant; concession of bail can be extended to the applicant/ accused.

9. To answer the aforesaid question, while deciding a bail application, only allegations made in the FIR, statements recorded under Section 161 Cr. P.C., nature, and gravity of the charge, other incriminating material against the accused, legal pleas raised by the accused, and relevant laws have to be considered. I am of the tentative view that at the stage of consideration of bail application, either anticipatory or regular bail such an affidavit could not be taken into consideration.

10. Tentative assessment of record reflects that the applicant was arrested at the police station and no recovery of crime weapon was made from him though the complainant stated in the F.I.R that all accused were duly armed with weapons.

11. Prima-facie, it appears from the record that the complainant had brought the applicant at police station and he was not arrested at the spot and he named the applicant in the F.I.R based on the alleged disclosure made by the co-accused, whose statement needs to be looked into by the trial Court under the law, besides, the alleged goats and/or sheep have not been shown as case property, thus the question of alleged attempt to rob the goats and/or sheep makes the case of the prosecution doubtful and in absence of crime weapon and case property, in such circumstances case of alleged attempt to commit robbery against the applicant requires further inquiry for the reason that the prosecution has made the recourse to

Section 511 PPC along with enabling provisions of PPC, which caters with such like situation, according to which whoever attempts to commit an offence punishable by Pakistan Penal Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by the Pakistan Penal Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both. The longest term of imprisonment provided for the offenses under Section 397 P.P.C. carrying punishment with imprisonment for not less than seven (07) years. One-half years comes to 3 and half years, which also does not fall within the prohibition contained in Section 497(1) Cr. P.C.

12. In view of the above circumstances, the applicant is admitted to bail in F.I.R No.310/2023, registered under Sections 392/397/511 and 34 PPC at Police Station Surjani Town, Karachi subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and PR bond in the like amount to the satisfaction of the trial Court.

13. It need not reiterate that the observation(s) made hereinabove is/are tentative and shall not prejudice the case of either party during the trial. However, the learned trial Court may proceed against the applicant, if he is found misusing the concession of bail.

14. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE