

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1707 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

04.09.2023

Mr. Anwar Zaib advocate for the applicant
Mr. Zahoor Shah, Additional PG
Mr. Muhammad Arshad Shar advocate and Mr. Aamir Raza Dayo
advocate files Vakalatnama on behalf of the complainant

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No. 308/2023, registered under Section 381/109/34 PPC, lodged at Police Station Boat Basin Karachi. The earlier bail plea of the applicant has been declined by the learned X-Additional Sessions Judge Karachi (South) vide order dated 14.7.2023 in Criminal Bail Application No.2375/2023.

2. The accusation against the applicant is that on 26.05.2023, Mst. Haseena in connivance with his brother Naveed committed theft of jewelry articles and cash amount from the house of the complainant, such report of the incident was given to Boat Basin Police Station, who lodged the report under Section 381/109/34 PPC, during investigation applicant named the co-accused and admitted to having committed theft and recovery of certain articles were made on her pointation.

3. Besides, his submissions on the insufficiency of the incriminating material to connect the applicant with the commission of the alleged offense. Learned counsel for the applicant has contended that the applicant is a woman and is entitled to be released on bail under the first proviso to Section 497(1) of the Code of Criminal Procedure 1898 ("Cr. PC")

4. Opposing his contention, the learned counsel for the complainant has referred to the exceptions mentioned in paragraph 6 of the order in *Tahira Batoool v. State* (PLD 2022 SC 764) and submitted that because of the nature of the offense, there is a likelihood of repeating the same by the applicant if released on bail.

5. Learned APG has opposed the bail plea of the applicant on the ground that the theft articles were recovered from the possession of the applicant/accused, who has named her brother as accomplice; that no enmity has been shown to the police and complainant; that sufficient material is available against the applicant to connect him with the alleged crime. He prayed for the dismissal of his bail application.

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

7. Tentative assessment of record reflects the following aspects of the case: -

- i. *The alleged incident of theft inside the flat of the complainant took place on 26.5.2023 and was reported on the same day.*
- ii. *The bail plea of the applicant was declined by the trial Court vide order dated 14.7.2023 on the premise that there is sufficient material available to connect the applicant with the commission of the offense.*
- iii. *Police allegedly recovered Rs.63,600/- along with two bangles and one neckless from the applicant, four gold tops, and one chain with locket as per mashirnama of recovery dated 26.5.2023 and 27.5.2023.*
- iv. *The applicant was arrested in police station Boat Basin on 26.5.2023.*
- v. *PWs have supported the version of the complainant*

8. The applicant mainly insisted on two points i.e. (1) that there is no proof with the complainant about the gold ornaments and US dollars allegedly taken by the applicant and (2) Proviso II of Section 497 Cr. P.C.

9. To appreciate the aforesaid grounds, primarily under the first proviso to Section 497(1) Cr. P.C., grant of bail is a rule and refusal an exception, as held in Tahira Batool's case. It is now well-settled that in a case where the accused is either a minor under the age of sixteen years, or woman, or a sick or infirm person, even in a non-bailable offense of prohibitory clause, in the same manner as bail is granted or refused in offenses of non-prohibitory clause of Section 497(1) Cr. P.C. In Taira Batool's case, the Supreme Court granted bail to the accused lady for an offense punishable under Section 395 PPC, under the 1st Proviso to Section 497(1) Cr. P.C., however, in the present case the applicant has been charged with an offense under Section 381 PPC which offense complained do not fall within the prohibitory clause of Section 497 Cr. P.C. In such circumstances, the Supreme Court in the case of Mst. Kaimat Bibi v. The State (2022 SCMR 609) has granted post-arrest bail to the lady accused in the case of theft. In the present circumstances, this Court is of the tentative view that the case of the applicant also falls within the ratio of the decisions rendered by the Supreme Court in the aforesaid cases including the case of Mst. Ghazala v. The State (2023 SCMR 887).

10. The question as raised by the learned counsel for the complainant that the case of the applicant squarely falls within any of the three settled exceptions to the following rules of granting bail:

- (a) *to abscond to escape the trial;*
- (b) *to tamper with the prosecution evidence, which includes influencing the prosecution witnesses; or*
- (c) *to repeat the offense.*

11. And the learned counsel pressed only the third exception, i.e., the likelihood of the applicant repeating the offense, based on the nature of the offense of theft. In such circumstances, the Supreme Court has described three circumstances in Tahira Batool's case that may be considered for deciding, whether or not there is a likelihood of repeating the offense by the accused, which are:

- (i) *his previous criminal record,*
- (ii) *nature of the offense, or*
- (iii) *manner of committing the offense.*

12. To appreciate the aforesaid proposition, in this regard the Supreme Court in the case of Iftikhar Ahmad v. State **PLD 2021 SC 799**. Has held that these exceptions only are illustrative, and not exhaustive, and the Courts may take into consideration “some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society”. Prima facie the case of the applicant does not fall within any of the said three settled exceptions to the rule as portrayed by the complainant on the premise that if the applicant is released on bail she will repeat the offense, prima facie this is a presumptive approach which cannot be considered at the bail stage. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Tahira Batool v. The State (**PLD 2022 SC 764**), Muhammad Tanveer vs the State, and another (**PLD 2017 SC 733**), Muhammad Nawaz alias Karo vs The State (**2023 SCMR 734**), Iftikhar Ahmed vs The State (**PLD 2021 SC 799**), Shahzad vs. The State (**2023 SCMR 679**), Zafar Iqbal vs Muhammad Anwar and others (**2099 SCMR 1488**), Mst. Ghazala vs. The State (**2023 SCMR 887**), Mst. Kainat Bibi vs. The State (**2022 SCMR 609**).

13. Because of the above factual and legal position as set forth by the Supreme Court, the applicant is found entitled to the relief of bail under the first proviso to Section 497(1) Cr.PC, and this bail application is accepted, subject to her furnishing solvent surety in the sum of Rs.50,000/- and PR Bond in the like amount to the satisfaction of the trial Court, However, the learned trial Court is directed to proceed with and conclude the trial expeditiously.

JUDGE