

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

Criminal Bail Application No. 1468 of 2023

Date

Order with signature of Judge

For hearing of bail application

12.9.2023

Mr. Abdul Aziz advocate for the applicant

Mr. Zahoor Shah Addl. PG along with SI/IO Qaiser Afridi of P.S Khawaja Ajmair Nagri, 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.201/2022, registered under Section 392/397/412/34 PPC, lodged at Police Station Khawaja Ajmair Nagri Karachi. The earlier bail plea of the applicant has been declined by the learned Vth -Additional District and Session Judge (Central) Karachi vide order dated 13.06.2023 in Criminal Bail Application No. 1175/2023.

2. The accusation against the applicant is that on 02.04.2022 at about 9.10 hours he robbed the complainant of Rs. 580 and other documents and fled away, such report of the incident was lodged at P.S Khawaja Ajmair Nagri on 05.04.2022; subsequently the applicant was arrested on the statement of co-accused.

3. It is, inter alia, contended that the applicant is innocent and has falsely been implicated in this case; he next contended that the complainant deposed before the trial Court with narration that the applicant is not the same accused who snatched his motorcycle, therefore, the case of the applicant becomes the case of further inquiry; that the applicant has been acquitted in FIR No. 353 of 2022 by the learned trial Court vide judgment dated 19.12.2022 wherein he was arrested in an offense under Section 23(1)(a) A of the Sindh Arms Act 2013 wherein the alleged recovery of the motorcycle of the complainant was made by the police, however, this story has been discarded by the learned trial Court as such the applicant cannot be saddled in an offshoot crime i.e FIR No. 201 of 2022; that the offenses under Section 392, 397 PPC do not fall within the prohibition contained in Section 497(1) Cr. P.C. He has further contended that no active and specific role has been attributed to the present applicant to show his presence at the alleged place of incident and the name of the applicant is not mentioned in the said FIR. He lastly prayed for allowing the bail application.

4. Learned APG has opposed the application on the premise that the applicant with his accomplices committed robbery with the complainant

and the offense is against the society and there is a strong likelihood that he will commit the same offense if released on bail. While denying the allegation of malice on the part of the police, learned APG submits that there was no reason for the police to implicate the applicant without any justification. He prayed for the dismissal of the bail application.

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

6. A tentative assessment of the record reveals that the alleged incident took place on 02.04.2022 and was reported to police on 05.04.2022 03 days after the incident. The applicant is not named in the FIR. The applicant was arrested in crime No. 353 of 2022 of P.S Gulshan-e-Iqbal under Section 23(1)(a) A of the Sindh Arms Act 2013, and the alleged motorcycle was recovered from his possession. The learned trial Court has recorded the statement of complainant Syed Arshad Hussain and failed to identify the applicant who allegedly snatched his motorcycle, Such a copy of the deposition has been placed on record.

7. Perusal of the record reveals that the applicant was not arrested on the spot, however, he was arrested in crime No. 353 of 2022 registered for an offense under Section 23(1)(a) A of the Sindh Arms Act 2013 wherein the alleged recovery was effected from him, however, the trial Court has discarded the evidence of the prosecution and acquitted him from the charge vide order dated 19.12.2022 and on the same piece of evidence the case of the applicant needs further inquiry. Besides it appears from the record that the complainant appeared before the trial Court and failed to identify the applicant. Such a statement has been placed on record by the learned counsel for the applicant. Prima facie the aforesaid factum requires further inquiry into the guilt of the applicant in terms of Section 497 Cr. P.C. Additionally, in the present case, no test-identification parade has been held in so far as the applicant/accused is concerned. It is well-settled that in cases where the names of culprits are not mentioned, holding of test-identification parade becomes mandatory. Reliance in this regard can be placed on the case of *Farman Ali v. The State* [1997 SCMR 971].

8. It is well-settled law that the process of identification parade has to be carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an unchangeable ritual, inconsequential non-performance whereof, may result in failure of the prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on the case of *Tasar Mehmood v. The State* (2020 SCMR 1013). Even otherwise, it is settled law that holding

of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in Court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, then even the non-holding of the identification parade would not be fatal for the prosecution case. Reliance is placed on *Ghazanfar Ali v. The State* (2012 SCMR 215) and *Muhammad Ali v. The State* (2022 SCMR 2024).

9. Keeping in view the punishments provided in the above Sections, while deciding the bail application lesser sentence out of an alternate sentence may be taken into consideration for determining whether the case falls under the prohibitory clause of Section 497(1) Cr. P.C, I am of the considered view that the case of the applicant requires further inquiry as there are no reasonable grounds to believe that he has committed an offense punishable with death, imprisonment for life, or 10 years as the prosecution could not collect any material against the applicant to show that he has committed an offense which falls within the prohibitory clause of Section 497(1) Cr.P.C.

10. The record shows that the applicant/accused is not a previous convict. Moreover, the applicant/accused has been in continuous custody since his arrest and he is no longer required for any investigation nor the prosecution has claimed any exceptional circumstance, that could justify keeping him behind bars for an indefinite period pending the determination of his guilt. 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.

11. In view of the peculiar facts and circumstances of the case, I am of the tentative opinion that prima facie, the applicant/accused has succeeded in bringing his case within the purview of further inquiry and as such is entitled to bail. Resultantly, this bail application is allowed and the applicant is granted post-arrest bail subject to furnishing his solvent surety in the sum of Rs:100,000/- (One hundred thousand only) and PR bond in the like amount to the satisfaction of the trial Court.

12. 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, the applicant/accused during proceedings before the trial Court, misuses the concession of bail, then the trial Court would be competent to cancel the bail of the applicant/accused without making any reference to this Court.

JUDGE