

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1846 of 2023

Date	Order with signature of Judge
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For hearing of bail application

13.09.2023

Mr. Muhammad Imran Kalmati advocate for the applicant
Ms. Amna Ansari, Additional PG
Syed Ameer Shah advocate for 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. 954/2022, registered under Section 381/383/384/34 PPC, lodged at Police Station Ferozabad, Karachi.

2. The accusation against the applicant is that on 26.05.2023, he committed theft of two laptops, cash amounting to Rs, 31, 00,000/- and other relevant documents from the house of the complainant, such report of the incident was given to Ferozabad Police Station, who lodged the criminal case against the applicant and others under Section 381/383/384/34 PPC; and during investigation recovered the theft articles from his possession.

3. Briefly, the factual background of the case is that in the earlier round, the post-arrest bail application of the applicant was dismissed by this Court as not press vide order dated 20.7.2023, and then he approached the trial court on the fresh ground on the premise that complainant made the contradictory narration of the facts, such deposition has been placed on record, however, the learned XII-Additional Sessions Judge Karachi (East) declined his bail vide order dated 17.8.2023 in Criminal Bail Application No.4339/2023 on the premise that reasonable ground existed to believe that the applicant committed the alleged offense.

4. It is inter alia contended by the learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention; that no recovery of a single article has been made from the direct possession of the applicant, however, the prosecution has malfidely shown that on his pointation two laptops and other material was recovered from his house; that there is no independent eye-witness of the occurrence nor anyone has seen the applicant/accused taking away the alleged articles; that the offense for which the applicant/accused has been charged does not attract the prohibitory clause of section 497, Cr.P.C. That there is, an unexplained

delay in lodging of FIR. He asserted that the reasons recorded by the trial Court for refusing the bail seems to be unreasonable, which establishes a case of further inquiry, thus, the learned trial Court failed to appreciate the law of bail; that discretion has wrongly been exercised by the trial court, the same can be reversed or recalled on the premise that the same is perverse and against the dicta laid down by the Supreme Court. On the statutory right of delay, he emphasized that as the statutory right to be released on bail on the ground of delay in the conclusion of the trial as well as based on favorable evidence brought on record in favor of the applicant, in such circumstances bail ought to have been granted to the applicant which was/is his constitutional rights under Articles 9, 10A and 14 of the Constitution of Pakistan and Section 497(1) Cr. P.C; and the provisions of the 3rd proviso comes to secure the rights of the accused, who is still under trial, and his guilt is yet to be proven. He next argued that the delay in the conclusion of the trial that occurs for no fault of the applicant is to be considered fresh ground however that aspect has been ignored. The learned counsel argued that the offenses mentioned in the FIR do not fall within the prohibitory clause of Section 497 Cr.P.C. He further argued that the applicant is entitled to concession of bail on the rule of consistency as the co-accused, Faraz has already been granted post-arrest bail by this Court vide order dated 31.3.2023, and there was no occasion for the trial court to refuse bail to the applicant under the principles set forth by the Supreme Court in its various pronouncements on the subject issue. On the point of recovery, the learned counsel submitted that the alleged recovery from the applicant by itself does not establish the offense under Section 380, PPC and it is a case of further inquiry into his guilt, in such circumstances the grant of bail is a rule and denial an exception, as per the dicta laid down by the Supreme Court in the cases of *Tariq Bashir and Others Versus The State*, **PLD 1995 Supreme Court 34** and *Muhammad Tanvir Vs. State*, **PLD 2017 Supreme Court 733**.

5. The learned counsel for the complainant has supported the impugned order and contended that the applicant is nominated with specific allegations of theft in the FIR and sufficient incriminating material is available, including recovery of articles, which connects the applicant in participation of the crime. He next argued that since the trial is likely to be concluded shortly, as such, at this stage granting the concession of post-arrest bail to the applicant is not called for. Learned counsel submitted that that trial is in progress, and when the trial is likely to conclude within the shortest possible time bail application should not be decided on merits and the matter be left to the trial Court because it may prejudice the case of either party He prayed for the dismissal of his bail application.

6. Learned Addl. PG has supported the stance of the complainant and opposed the bail plea of the applicant on the grounds that the theft articles were recovered from the possession of the applicant/accused; 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. She prayed for the dismissal of his bail application.

7. I have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

8. The tentative assessment of the record reflects that complainant Mst. Alma Hashim lodged FIR on 26.12.2022 with the allegation that she handed over her business and left Pakistan for the United States of America when she returned to Pakistan on 08.12.2021 she found missing her valuables articles including cash /prize bonds from her house situated at PECHS-II Karachi and enquired from the applicant who avoided to reply and attempted to cause harassment to her and through his fake ID on Facebook blackmailed her and obtained 80 lacs rupees in that episode, compelling her to return to USA and on her return to Pakistan on 23.09.2022 she again found missing her Prize bonds amounting to Rs. 18,00,000/- and Golden ornaments as well as cash of Rs. 13,00,000/- and one motorcycle, including property file. The applicant was arrested in the present case which led to the alleged recovery of theft articles from his house. The applicant filed bail application No. 1892 of 2023 before the trial Court which was dismissed vide order dated 29.04.2023 on the premise that sufficient material was available to connect the applicant with the crime. The applicant approached this Court in Bail Application No. 940 of 2023 which was dismissed as not pressed vide order dated 20.07.2023. In the intervening period co-accused Ahmed Faraz approached this Court by filing Bail Application No. 569 of 2023 which was allowed vide order dated 31.03.2023 on the ground that no recovery had been made from the applicant/accused and the case does not fall within the prohibitory clause of Section 497 Cr. P.C. The applicant also approached the trial Court on fresh ground based on the deposition of complainant recorded on 06.07.2023 however his bail plea was declined by the trial Court vide order dated 17.08.2023 on the premise that the bail application has no merits. Now the applicant has raised his voice of concern that the applicant has the valuable right to be considered on fresh grounds in terms of the ratio of the judgment passed by the Supreme Court in the cases of Muhammad Nawaz vs The State 2023 SCMR 734, Arsalan Masih vs The State 2019 SCMR 1152, Shahzad vs The State 2023 SCMR 679 and Muhammad Nadeem vs The State 2023 SCMR 184.

9. This is the second bail application of accused Musab Ali which has been filed after recording evidence of complainant Mst. Alma Hashim on 06.07.2023; the learned trial Court while rejecting the bail plea of the applicant has observed that such discrepancies are minor which are normal as naturally human memory and retention power are limited; and at the bail stage, only a tentative assessment of available records is permissible to form a rational opinion and the Court may not go into a deeper appreciation of the available material.

10. The progress in the trial reveals that evidence of the complainant has been recorded and remaining witnesses are yet to be examined. So far as discrepancies in the statement of the complainant are concerned, suffice it to say that some discrepancies/ minor contradictions were/are never of any help for the accused to claim the benefit of the doubt at this stage and to claim bail on that analogy, where the case is yet to be proved beyond a reasonable doubt. In criminal jurisprudence, the evidence of a witness is always to be read as a whole and the Court should not pick up a sentence in isolation from the entire statement and ignore its proper reference, use the same against or in favor of a party; minor discrepancies do creep by the passage of time or by keeping the witness under lengthy cross-examination, however, the contradictions have to be material and substantial to adversely affect the case of the prosecution and at this stage, nothing could be said for and against, for the reasons discussed supra.

11. It is also well settled now that after the completion of the investigation and submission of the report under section 173, Cr.P.C. (Challan) and framing of charge, the trial is in progress as evidence of the complainant has already been recorded. This Court ordinarily does not interfere with the order of the trial Court relating to bail when the trial is either commenced or partially recorded to avoid discussion and remarks on the merits of the case as held in the case of *Ehsan Akbar v. The State and 2 others* (2007 SCMR 482). It has been long settled by the Supreme Court that when the trial is likely to commence or begin, bail application should not be decided on merits, and the matter be left to the trial Court because it may prejudice the case of either party. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of *Muhammad Sadik & others vs The State* 1980 SCMR 203, *Muhammad Ismail vs Muhammad Rafiq* PLD 1989 SC 585, *Mian Dad vs The State* 1992 SCMR 1418, *Gohar Rehman vs Muhammad Tahir* 2011 SCMR 815.

12. In view of what has been discussed above, and keeping in view the dicta laid down by the Supreme Court in the aforesaid cases, this Court does not find any infirmity in the impugned order dated 17.8.2023 of the learned Additional Sessions Judge; resultantly the instant bail application is dismissed. It is made clear that nothing stated or observed while deciding the instant bail application shall be tantamount to expression on the merits of the case. However, the learned trial Court is directed to conclude the trial of the case within two months by examining the remaining witnesses after receipt of this order.

JUDGE

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