

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1892 of 2023

Date

Order with signature of Judge

For hearing of bail application

02.10.2023

Mr. Abid Ali advocate for the applicants/accused
Mr. Zahoor Shah, Additional PG alongwith IO/SI Sikandar Khan of PS
Madina Colony Karachi
Complainant Muhammad Hanif present in person.

Through this bail application under Section 497 Cr.P.C., the applicants Farhan Khan and Abdul Latif have sought admission to post-arrest bail in F.I.R No.75/2023, registered under Section 392/397/34 PPC, lodged at Police Station Madina Colony Karachi. The earlier bail plea of the applicant has been declined by the learned III Additional Sessions Judge (West) Karachi vide order dated 01.08.2023 in Criminal Bail Application No. 3688/2023.

2. The accusation against the applicants is that on 15.03.2023 they along with their accomplice robbed the complainant of one mobile phone Realme C2, Rs.12000, and other valuables and fled away from the spot, such report of the incident was lodged at P.S Madina Colony on 16.3.2023, where the complainant saw the applicants confined in the police lockup; where the police disclosed their names finally the complainant identified the articles as well as the accused.

3. Learned advocate for the applicants/accused mainly contended that the applicants/accused have been granted bail by the trial Court in the main case bearing Crime No.72/2023 under sections 392/397/34 PPC of Police Station Madina Colony Karachi vide order dated 27.06.2023 and applicant Farhan Khan in FIR No. 73/2023 under sections 13(1) A Sindh Arms Act, 2013 of Police Station Madina Colony Karachi vide order dated 04.08.2023; that all the PWs are police officials; there is no question of tampering with the evidence. It is also argued that a pistol has been foisted upon the applicant Farhan Khan by the police with an ulterior motive. Lastly, it is submitted that the applicants/accused have been behind bars since their arrest in the aforesaid crimes.

4. The complainant who is present in person has submitted that the applicants were identified by him inside the police lockup where they issued him threats. He prayed for the dismissal of the bail application.

5. Learned APG appearing on behalf of the State has argued that all the PWs have implicated the applicants/accused in the commission of the offense. He has opposed the bail application on the premise that there is no ill will on the part of the complainant and the police. He prayed for the dismissal of the bail application.

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

7. Tentative assessment of the record reveals that on 15.03.2023 the applicants along with their accomplices robbed the complainant of one mobile phone Realme C2, Rs.12000, and other valuables and fled away, such report of the incident was lodged at P.S Madina Colony on 16.3.2023 when the complainant reached police station where he in saw the applicants confined in the police lockup; where he identified them, where police disclosed their names to the complainant.

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). However, in the present case, the name of the applicants have been disclosed in the FIR, where the complainant made his appearance at the police station where he saw the applicants confined in the lockup on the premise that they were arrested by the police in another case, and after their purported arrest, they were shown to the complainant to identify the accused, inside the police lockup which is prima facie violate of terms of Article 22 of the Qanun-e-Shahadat Order, 1984.

9. In FIR Sections 393 and 397 PPC has been applied. Section 391 PPC provides that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity". The punishment under Section 395 is that whoever commits

dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and shall also be liable to a fine. 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 07 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 07 years.

10. Keeping in view the punishments provided in the above Sections and facts and circumstances discussed supra it is well settled that 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 tentative view that the case of the applicants requires further inquiry. Besides the alleged offenses do not fall within the prohibitory clause of Section 497(1) Cr.P.C.

11. I am inclined to grant bail to the applicants/accused for the reasons that bail has already been granted to the applicants/accused by the trial Court in main case bearing Crime No. 75/2023 under sections 392/397/34 PPC of Police Station Madina Colony Karachi. It is observed that in the above case, all the PWs are police officials, and the case has already been challaned, the applicants/accused are no more required for investigation. They are behind bars with effect from 15.3.2023. There is no apprehension of tampering with the prosecution evidence.

12. Prima facie the Court while hearing a bail application is not required to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. Reliance on the aforesaid proposition is placed on the case of Jamaluddin alias Zubair Khan versus the State (2012 SCMR 573).

13. Keeping in view the facts and circumstances of the case, prima facie, the case against the applicants/accused requires further inquiry as contemplated under subsection (2) of Section 497 Cr.P.C., therefore Applicants/accused Farhan Khan and Abdul Latif are admitted to bail subject to their furnishing solvent surety in the sum of Rs.200,000/- (two hundred thousand Rupees), each and P.R bond in the like amount to the satisfaction of trial Court. The learned trial Court is directed to expedite the trial and examine the complainant within one month and if the charge is not framed the same shall be framed on the next date of hearing positively.

JUDGE