

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2517 of 2023

Date *Order with signature of Judge*

For hearing of Bail Application.

16.05.2024

Mr. Ghulam Akbar Jatoi, Advocate along with Applicant (on bail).
Mr. Shoaib Safdar, Assistant Prosecutor General, Sindh.
Complainant Inspector Aijaz Ali Nodnani, is present in person.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Jahanzeb Khan seeks his admission on pre-arrest bail in Crime No.06/2023 of Police Station Wild Life South Karachi, under Section 24, 39, 40, 73(i), (ii), 53, 84, 89 and 186 of Sindh Wildlife Act read with Section 353 PPC. The applicant preferred his anticipatory bail before the Court of Sessions, which was assigned to 10th Addl. Sessions Judge, Karachi (South), who after hearing the parties, has turned down his request through order dated 28.10.2023. Hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Pursuant to directions contained under previous order, learned trial Court / 10th Addl. Sessions Judge, Karachi (South) has submitted progress report as well as status of the trial dated 05.09.2024, which being self-explanatory, is hereby reproduced;_

“In obedience to above referred directions I have the honour to submit progress report in FOR No.6/2023 Wildlife Station, South Karachi as under:-

1. That, First Offence Report No. 6/2023 Wildlife Station, South Karachi was registered on 19.10.2023 which was investigated by Ashfaq Ali Memon, Game Officer, Sindh Wild Life Department Karachi, who submitted final report before the Court for Honourable Sessions Judge, Karachi South on 02.11.2024, the same was transferred to this Court for disposal in accordance with law.

2. That, learned Presiding Officer could not take cognizance of the alleged offence due to reason that the so-called final report was not indicating the names of accused and the witnesses as well, nor copies of statements were provided therewith for supplying to the accused, hence, as per case diaries, directions was given to Investigating Officer to submit the complete final report u/s 173 Cr.P.C. (Copy of the so-called final report is submitted herewith).
3. That, the accused remained in attendance on each date of hearing, while Investigating Officer chose to remain absent and failed to comply with the directions, in the meanwhile on 29.04.2024 Presiding Officer was transferred and the Court stood vacant.
4. On last date of hearing i.e. 30.04.2024 the accused was present but Investigating Officer was called absent, hence order was passed for issuance of showcause notice u/s 175 PPC to the Investigating Officer due to his failure in submission of complete final report along with copies of statements for holding summary trial of the accused.
5. That, the case is now fixed for compliance on 18.05.2024.
6. The report is submitted hereinabove as desired for placing before the Hon'ble Bench."

4. Learned counsel for the applicant submits that applicant has no nexus or concern with the birds dealing; however, he is employee of one Ali Bahadur who is licensee of the department. He further submits that though the permit was granted to said Ali Bahadur, had expired on 30.06.2023, yet he as well as applicant have submitted many applications to the concerned and same have not been decided so far. In support of his contention, learned counsel submits copies of the same, taken on record. He further submits that punishment provided by the law for the offences mentioned under the FIR is five years and a fine of Rs.100,000/-, therefore, the offence does not fall within the ambit of prohibitory clause as contained under Section 497 Cr.P.C. He further submits that the applicant after furnishing surety before this Court has joined the trial proceedings, which is evident from the report submitted by the trial Court; hence, submits that case against the applicant requires further inquiry and interim bail granted to the applicant may be confirmed.

5. Learned Assistant P.G, Sindh assisted by the complainant opposes the bail application on the ground that applicant is nominated in the FIR; besides, has made quarrel with the raiding party of the department, therefore, is not entitled for the bail. He; however, could not controvert the fact that offence with which applicant has been charged, carries maximum punishment of five years. As far as, imposition of fine is concerned, it is yet to be established by the prosecution after recording its evidence. He is also not in a position to rebut the report submitted by the trial Court.

6. **Heard arguments and perused record.** No doubt, the applicant stands nominated in the FIR; however, punishment provided by the law for the offense with which applicant has been charged, carries maximum punishment of five years with a fine of Rs.100,000/-; hence, same does not exceed limits of prohibitory clause of Section 497 Cr.P.C. Per prosecution case, though the charge sheet has been filed by the I.O, Wildlife Department, yet the said report does not show proper names of the witnesses as well as accused and inspite of directions given to I.O for submission of complete final report, he has failed to submit the same before the trial Court.

7. In the circumstances and in view of above factual position of record, applicant has succeeded to make out a good prima facie case for bail within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant **Jahanzeb Khan son of Gul Khan** on 06.11.2023 is hereby confirmed on same terms and conditions.

8. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court would be competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC.

9. Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned. Learned MIT-II to ensure compliance.

JUDGE

Zulfiqar/P.A