

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

Criminal Bail Application No.1042 of 2024

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Date	Order with signature of Judge
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For hearing of bail application

**Date of hearing and Order:-05.7.2024**

Mr. Allah Bakhsh advocate for the applicant / accused.  
Mr. Mumtaz Ali Shah, Assistant PG

**ORDER**

**Adnan-ul-Karim Memon, J:-** The Applicant Niaz Hussain has approached this court for post-arrest bail in F.I.R No. 185/2024, under Section 392/397/412/34 PPC registered at P.S. Saeedabad.

2. His first bail application has been dismissed by the trial court vide order dated 6.5.2024 on the ground that the applicant/accused, along with a co-accused person came on two motorbikes and made firing, during firing complainant and one Baber received bullet injuries, and consequently the cash amount of Rs. 500,000/-, one mobile phone Moto, Mobile PSO machine, was snatched and they escaped away from the spot. It is alleged that the applicant/ accused was arrested along with the recovery of the snatched mobile phone. It is further alleged that the statements of witnesses under Section 161 Cr.P.C. support the prosecution's case.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and has falsely been implicated in the case with malafide intentions and ulterior motives. He has further argued that the applicant/accused is not named in the FIR nor the specific role assigned to him in the alleged crime, which is unwitnessed by any of the persons of the locality where the alleged incident took place. It is also argued that the applicant/accused was implicated in the case on the confessional statement before the police when he was brought by the police at the police station on 26.04.2024, wherein he was booked under Section 411 PPC; that such statement before the police is not admissible in law in the absence of proper statement under section 164 Cr.P.C. before the Judicial Magistrate. It is also urged that the alleged offense does not fall within the prohibitory clause of Section 497 Cr.P.C. Lastly, he has contended that the applicant/accused is a poor person and failed to fulfill the demand of police as such he has been implicated in the false case and since his arrest, he is behind the bars and there is no likelihood that the case of the applicant will be decided in near future. It is the case of the

applicant that PW Noman recorded his statement under section 161 Cr. P.C in which he disclosed the factum that the accused were muffled faces; that the case of the applicant neither false within the ambit of Section 392/397 and 411, 412 PPC mere the allegation that the applicant used the crime phone by inserting his sim requires evidence, which is not available with the prosecution; that no mobile phone required from the possession of the applicant besides, CDR is no piece of evidence in absence of ocular evidence; that no identification parade was held against the applicant.

4. Learned Addl. P.G. for the State has submitted that the complainant has been served who extended his no objection if the bail is granted to the applicant, which factum is disclosed in the order dated 10.06.2024 however, he vehemently opposed the bail application and submitted that the applicant is not entitled to concession of bail based on the concessional statement. Notice of this bail application has also been issued to the complainant but there is no representation on his behalf.

5. I have considered the arguments advanced by learned counsel for the applicant/accused and learned Addl. PG as well as perused the material available on the record.

6. From the perusal of the FIR, it appears that the same has been lodged against the unknown accused persons who committed the alleged offence, however, there is no description of the accused persons mentioned in the FIR. The record does not show that any implicating material has been recovered from the applicant/accused.

7. From the record, it also transpires that the applicant/accused was involved in the case upon his statement in police custody on the premise he was arrested on 26.04.2024, who disclosed that he purchased the mobile phone, whereby he inserted the sim that phone, thus his action falls within the ambit of Section 411 PPC, however at the same time his case was forwarded for identification parade but the application of the police was rejected as the complainant and his witnesses did not turn up.

8. If this the position of the case, in such a scenario the Supreme Court in the case of *The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum* [2001 SCMR 14], while dilating upon the evidentiary value of statement made before the police in the light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements recorded by police during investigation are inadmissible in the evidence and cannot be relied upon.

9. In the present case, though the FIR was against the unknown persons yet upon the arrest of the present applicant/accused there appears

no test-identification parade has been held as the witnesses failed to identify the applicant, and such application moved by the police was rejected on the aforesaid ground. 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], wherein the Supreme Court of Pakistan, inter alia, has held:-

**“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits.....”**

10. The record shows that the applicant/accused is neither a previous convict nor a hardened criminal and has been in continuous custody since his arrest and is no longer required for any investigation nor the prosecution has claimed any exceptional circumstance, that could justify keeping him behind the bars for an indefinite period pending 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. From the tentative assessment of the evidence in the hand of the prosecution, it appears that there is hearsay evidence against the present applicant/accused. Nonetheless, the truth or otherwise of charges leveled against the accused could only be determined after trial after taking into consideration the evidence adduced by both parties. It may be observed that the offense alleged against the applicant/accused falls outside the prohibitory clause of Section 497, Cr.P.C. In such like case grant of bail is a rule and refusal is an exception. Reliance in this regard can be placed on the cases of Tariq Bashir and 5 others v. The State [PLD 1995 SC 34] and Mohammed Tanveer v. the State [PLD 2017 Supreme Court 733].

11 In view of the peculiar facts and circumstances of the case, I am of the opinion that, prima facie, the applicant/accused has succeeded in bringing his case within the purview of further inquiry and as such he is entitled to bail and for this reason, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- and P.R. Bond in the like amount to the satisfaction of the trial Court.

12. Needless to mention here any observation made in this order is tentative and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

JUDGE