

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.942 of 2024

(*Ismail v The State*)

Criminal Bail Application No.719 of 2024

(*Habibullah v The State*)

Date	Order with signature of Judge
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For hearing of bail application(s)

Date of hearing and Order:- 08.07.2024

Mr. Amjad Ali Rajpar advocate for the applicant
in Criminal Bail Application No.942 of 2024
Mr. Saba Khan advocate for applicant
in Criminal Bail Application No.719 of 2024
Mr. Riaz Ahmed Phulpoto advocate for the complainant.
Mr.Siraj Ahmed Chandio Add. PG

ORDER

Adnan-ul-Karim Memon, J:- Through these bail applications under Section 497 and 498 Cr.P.C., the applicant Ismail has sought admission to post-arrest bail, whereas the applicant Habibullah is seeking pre-arrest bail in F.I.R No. 557/2023, registered under Section 380/457 PPC, lodged at Police Station Gadap City Karachi. During the investigation Section 411 PPC was added to the charge sheet as co-accused Muhammad and Abdul Jalil allegedly confessed their guilt and introduced the name of applicant Ismail with the allegations that he came to them to sell the golden ornaments on such statement of co-accused the applicant Ismail was arrested and applicant Habibullah was also shown involved in the subject case. However, applicant Habibullah succeeded in obtaining pre-arrest bail firstly by the trial Court and after the dismissal of his bail application, he approached this Court on 27.03.2024.

2. The prosecution further alleged that based on the CDR report there was coordination between applicants Ismail and Habibullah. During the investigation, it is further alleged that applicant Ismail after his arrest led to the recovery of a few golden ornaments, which were allegedly robbed from the house of the complainant on 03.12.2023, and applicant Habibullah allegedly received the stolen property from accused Ismail. Though no recovery has been effected from him. Both the applicants claim innocence and pray for their release on post and pre-arrest bail in the subject crime and this is the reason that both bail applications are taken up together. Their earlier bail plea has been declined by the learned VI Additional & Sessions Judge Malir Karachi vide orders dated 24.04.2024

and 25.3.2024 on the premise that the applicant Ismail after his arrest led to the recovery of a few golden ornaments which were allegedly robbed from the house of complainant on 03.12.2023 and applicant Habibullah received the stolen property from accused Ismail.

3. It is inter-alia contended by the learned counsel for the applicant Ismail that the name of the applicant is misplaced in the FIR and he was arrested after one month of the alleged incident i.e. 03.12.2023; that the alleged offense under Section 380 carried punishment up to 5 years; that no robbed articles were recovered from his physical possession but the police shown his arrest from the place of occurrence; that CCTV footage is available to implicate the applicant. Learned counsel has argued that the applicant has not committed robbery or dacoity and he has been arrested on account of suspicion on the statement of co-accused which is not admissible in evidence and subsequently alleged articles were foisted upon him, so he is entitled to be released on post-arrest bail, however no any iota of evidence is on the record to show previous involvement of the applicant in any case of dacoity or theft, therefore, the applicability of the above Sections of law is yet to be determined during the trial. He argued that after the arrest of the applicant/accused no identification parade was held to show his culpability in the alleged crime. Further the co-accused have already been granted bail in this case, hence the applicant/accused is entitled to post-arrest bail.

4. It is inter-alia contended by the learned counsel for the applicant Habibullah that the applicant/accused is innocent and has been falsely implicated in this case with malicious intent and ulterior motives. He argued that the applicant/accused was a goldsmith who checked his CCTV cameras as well opposite shop to find the culprits but no culprit was found to sell the gold ornaments as portrayed by the complainant and co-accused. He emphasized the applicant/accused has not purchased the gold from any of the accused. Further argued that the extra-judicial confession of accused Ismail and other co-accused was recorded in police custody disclosing the name of applicant/accused, thus not admissible under Articles 38 & 39 of the Qanun-e-Shahadat Order, 1984. The further offense alleged does not fall within the prohibitory clause. He added the Police with malafide intentions attempted to arrest the applicant/accused which will cause his humiliation. Finally, the counsel prayed for the confirmation of bail for the applicant/accused already granted by this Court vide order dated 27.03.2024.

5. Learned counsel for the complainant has attempted to give a brief history of the case by narrating the facts that on 3.12.2023, at noon, the

complainant returned home and found the grill had been broken, the lock was also broken, and household items were scattered and he found that various gold ornaments six watches valued at Rs. 1,50,000/-, and a Samsung mobile S-8 were missing/stolen from the almirah. He argued that though the FIR is against unknown accused. However, during the investigation, the co-accused took the name of applicant/accused Ismail who was later arrested, and recovery of some portion of the stolen property was made on his pointation. Further, he also disclosed the names of his accomplices and so also disclosed the names of persons to whom he sold out stolen ornaments including the applicant Habibullah. He added that the accused Ismail also in custody pointed to the shop of the present accused Habibullah. The learned counsel further submitted that the applicants/accused are not able to demonstrate any malafides in lodging the FIR nor is their arrest being sought with ulterior motives, which remains the primary test for the grant of pre-arrest bail. He next argued that the grant of pre-arrest bail is an extraordinary relief that may be granted in extraordinary situations, to protect the innocent person against victimization through abuse of law for ulterior motives; and that pre-arrest bail is not to be granted as a substitute or an alternative to post-arrest bail. He next argued that the applicants have been specifically nominated in the subject charge sheet/crime with a specific role. Per learned counsel, the version of the complainant party is supported by the statements of the witnesses recorded under Section 161, Cr.P.C. as well as by recoveries of the theft articles from accused Ismail, and further recovery is yet to be effected from applicant Habibullah, who is seeking pre-arrest bail as such no extraordinary circumstances are available to thwart the investigation process. On the point of the defense version, as pleaded by the accused, is concerned, he submitted that this Court is not to make a probe into the defense version to advance a plea of bail, rather it has to assess tentatively the material produced before it and to see if reasonable ground exists to believe, prima facie involvement of accused in the commission of the offense and if the accused found connected with the commission of the offense, he will not be released on bail based on further inquiry. Per learned counsel, the applicants/Accused has failed to demonstrate mala fide or ulterior motive on the part of the complainant or police to falsely implicate him in this case. He next argued that so far as the plea of the applicant/accused Ismail that his extra-judicial confession was recorded in police custody, thus not admissible under Articles 38 & 39 of the Qanun-e-Shahadat Order, 1984, is concerned, the legal position in such a case is that if any incriminatory material related to the case is recovered or any fact is discovered in consequence of the information conveyed by the accused person, then the information so received would be admissible in

evidence within the purview of Article 40 of the Qanun-e- Shahadat Order, 1984 because then the presumption would be towards its truthfulness. Since the disclosure of the accused Ismail has been followed by the recovery of some stolen property as well as the discovery of new facts of selling the gold ornaments including the present applicant/accused Habibullah, which earlier was not known. He argued that Article 40, of Qanoon-e-Shahadat, provides that when any fact is revealed in consequence of information received from any accused in the custody of a police officer, such information whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, may be proved. The information supplied by the applicant Ismail under Article 40 ibid relating to incriminating articles is admissible. In support of his contention, he relied upon the case of *Muhammad Akbar v The State* **1995 SCMR 693**, *Murad Khan v Fazl-e-Subhan* **PLD 1983 SC 82**, and copy of the charge-sheet, statements of ASI Shahbaz Ali and PC Humayoon Baig recorded under Section 161 Cr.P.C.

6. Learned Assistant P.G. has adopted the arguments of the learned counsel for the complainant and submitted that the learned trial Court has rightly dismissed the bail plea of the applicants. It has been contended that it is a settled principle of law that in such cases the statement of the complainant itself is sufficient for proving the charge against the accused. Therefore, they do not deserve any leniency by this Court. He prayed for the dismissal of his bail application.

7. I have heard the learned Counsel for the Applicants, learned A.P.G for the state as well as learned Counsel representing the Complainant, and perused the material available on record and case law cited at the Bar.

8. For the reasons to follow, the applicant Habibhullah has succeeded in making the case for the confirmation of the pre-arrest bail, hence, this bail application is allowed and the ad-interim pre-arrest bail already granted to the applicant vide order dated 27.03.2024 is confirmed subject to his furnishing of fresh surety bonds in the sum of Rs.25,000/- (Rupees Twenty Five thousand only) with P.R bond in the like amount to the satisfaction of the Nazir of this Court. Resultantly, the applicant Ismail is also admitted to post-arrest Bail subject to his furnishing of a surety bond in the sum of Rs.100,000/- (Rupees one hundred thousand only) with P.R bond in the like amount each to the satisfaction of the Trial Court.

JUDGE