

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1049 of 2024

Date	Order with signature of Judge
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For hearing of bail application

Date of hearing and Order:- 08.07.2024

Mr. Dur Muhammad Mallah advocate for the applicant
Mr. Siraj Chandio, Additional PG alongwith complainant Ghulam Yaseen and
Inspector/SIO Muhammad Nawaz of PS Sohrab Gotht Karachi.

ORDER

Adnan-ul-Karim Memon, J:- Through this bail application under Section 497 Cr.P.C., the applicant Ali Haider has sought admission to post-arrest bail in F.I.R No. 121/2024, registered under Section 397 PPC, lodged at Police Station Sohrab Gotht Karachi. The earlier bail plea of the applicant has been declined by the learned Additional & Sessions Judge VIII Malir Karachi vide order dated 13.05.2024 in Criminal Bail Application No.2135/2024 on the premise that he along with his accomplices committed robbery/dacoity of cash Rs. 70,000/- ATM Cards, Covid-19 cards, checkbooks, registration book of motorcycle and mobile phone from the complainant Ghulam Yasin. However, this factum has been denied by the complainant who is present in person with the narration that the present applicant is not the same accused, who committed such an offense. This factual disclosure is alarming on the part of the Investigating officer, who is also in attendance and has no words to offer. However, he objected to the conduct of the complainant and submitted that this is a non-compoundable offense and the complainant cannot recoil from his statement recorded under section 161 Cr.PC during the investigation.

2. Learned counsel for the applicant/accused has argued that there is no ground to believe that the applicant/accused has committed any offense with which he stands charged otherwise the story narrated in the FIR is concocted and fabricated thus the case requires further inquiry. He has further argued that no such incident has ever occurred and the complainant lodged an FIR against unknown assailants, when he came to know that the applicant had been booked in this case he came forward before the trial Court as well as before this Court and sworn an affidavit of No Objection if the bail is granted to the applicant/accused, therefore, he may be admitted to post-arrest bail in the aforesaid crime.

3. Learned APG assisted by Inspector/SIO Muhammad Nawaz of PS Sohrab Gotht Karachi has opposed the bail plea of the applicant on the ground that FIR was lodged without delay; that specific role has been

assigned to the applicant; no enmity has been shown to the police; that sufficient material is available against the applicant to connect him with the crime; that police officials are good witnesses like others; that Section 397 PPC carries punishment for up to 07 years; that the crime is against the society. He prayed for the dismissal of his bail application. Whereas, in pursuance of the Court Notice, the complainant present in Court, while referring to his affidavit, available on the record, submits that he has no objection to the grant of bail to the applicant/accused as the FIR has been lodged against unknown persons. For the sake of ready reference, Para No. 2 of the complainant's affidavit is reproduced as under:-

“That I say that accused above named is not same culprit, hence I do not want to record the case against him if this honorable court grants bail to accused person above named I have no objection.”

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

5. Before deciding the post-arrest bail on merit, which is based on two versions one forwarded by the complainant present in court and the second by the investigating officer who challaned the case. However, I am cognizant of the fact that, while deciding a Bail Application, only allegations made in the FIR, statements recorded under Section 161 Cr.P.C. nature and gravity of the charge, other incriminating material against the accused, legal pleas raised by the accused and relevant law have to be considered. However, in the present case, the record reveals that the offense with which the accused/applicant has been charged is non-compoundable. However, in view of the statement of the complainant, as well as his affidavit of no objection, the case of the applicant/accused calls for further inquiry under sub-section (2) of Section 497 Cr.P.C. for the simple reason that the complainant does not wish to prosecute the accused and makes a categorical statement through his affidavit. As such, this Court Court has left no option but to see the version of the complainant, which is a paramount consideration at the bail stage, though the offense is not compoundable, however, the version of the complainant cannot be brushed aside at this stage. The record also shows that the applicant/accused is not a previous convict nor a hardened criminal as no record has been produced to the aforesaid effect. Moreover, he has been behind bars 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 bars for an indefinite period pending the determination of his guilt. Consequently, while taking into consideration the statement of the complainant before the Court and his affidavit, the

applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- (Rupees two lacs) and P.R. Bond in the like amount to the satisfaction of the trial court.

6. Needless to say the observations made in this order are tentative and shall not influence the trial Court while concluding the case. The learned trial Court is to expeditiously proceed with the trial under law, and in case of abuse or misuse of the concession of bail by the applicant, including causing a delay in the conclusion of the trial, the prosecution may approach the competent Court for cancellation of bail under Section 497(5), Cr.P.C.

JUDGE

Shafi