

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.890 of 2024

Date Order with signature of Judge

For hearing of case.

Date of hearing and Order 15.7.2024

Mr. Muhammad Naseeruddin advocate for the applicant / accused
Mr. Khadim Hussain, Additional PG alongwith ASI/IO Nisar Ahmed PS
Jamshed Quarter Karachi and SI Hakim Ali PS Jamshed Quarter Karachi
Complainant Syed Iqrar Shah is present in person

ORDER

Adnan-ul-Karim Memon, J The applicant Habibullah has filed this bail application under Section 497 Cr.P.C. against the order dated 06.4.2024 passed by learned II-Additional District & Sessions Judge Karachi East in Cr. Bail Application No. 1606 of 2024, whereby his post-arrest bail was declined on the premise that the applicant received the stolen property and used it for his personal use, which was snatched on the day of the incident by co-accused as such Section 412 PPC was inserted in the FIR/charge sheet.

2. Learned counsel states that the applicant / accused is not nominated in the FIR after his arrest and no identification parade has been conducted. He further submitted that the complainant was robbed of Rs. 200,000/- at the hands of unknown robbers, such a report of the incident was lodged by him on 23.02.2024, whereas the alleged incident took place on 19.02.2024. The complainant has not disclosed the name of the present applicant in the present FIR, however, the Investigating Officer arrested the applicant on the premise that he used the robbed mobile, and Section 412 PPC was inserted. As per the Birth Registration Certificate issued by NADRA, the applicant was born on 01.01.2009 and is aged about 15 years.

3. The complainant present in the Court states that the applicant was not the main accused; the Investigating Officer present in the Court is of the view that Section 412 PPC is attracted in this case, therefore, the bail application of the applicant is not liable to be granted by this Court. Learned Additional APG is of the same view.

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

5. There is another aspect of the case the applicant claims to be a juvenile born on 01.01.2009 and is about 15 years old as per his birth certificate duly issued by the NADRA, such certificate is available in the

police file/ file of this Court (page 39) in such a scenario, again the Supreme Court in the case of Khawar Kayani Vs. The State (PLD 2022 SC 551) has come to rescue the person incarcerated in jail by interpreting Section 6(5) of the Juvenile Justice System Act, 2018. The question of whether the case of the applicant, being a child as disclosed by the investigating officer in the charge sheet, falls within the exception contained in section 83 P.P.C., for ease of reference, is hereby reproduced infra:-

“Act of a child above [ten] and under [fourteen] of immature understanding.- Nothing is an offense which is done by a child above [ten] years of age and under [fourteen], who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

6. In principle bail does not mean acquittal of the accused but only change of custody from police to the sureties, who on furnishing bonds take responsibility to produce the accused whenever and wherever required to be produced. On the aforesaid proposition, I am fortified with the decision of the Supreme Court on the case of Haji Muhammad Nazir v. The State (2008 SCMR 807).

7. The record reveals that the offense with which the accused/applicant has been charged is non-compoundable. However, because of the statement of the complainant, as well as his no objection to the extent that the applicant was not the person who committed the alleged offense, he states that the investigating officer opined that the applicant only used the mobile phone. If this is the position of the case, prima facie, it is yet to be seen whether the applicant could be booked for a crime whereby he just used the mobile phone and it is for the trial Court to see which provision of law is applicable in the present case or otherwise. All factums call for further inquiry under sub-section (2) of Section 497 Cr. P.C

8. The record also shows that the applicant/accused is not a previous convict nor a hardened criminal. 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.

9. The legal position as set forth by the Supreme Court in the cases of Khawar Kayani Vs. The State (PLD 2022 SC 551) and unreported Judgment dated 05.06.2024 passed by the Supreme Court in Cr. Petition

No. 239 of 2024 (*re-Adnan Shafai v The State*). The applicant is also found to be entitled to the relief of bail under the first proviso to Section 497(1) Cr.PC, including the reasons recorded hereinabove and this bail application is accepted, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and PR Bond in the like amount to the satisfaction of the trial Court, However, the learned trial Court is directed to proceed with and conclude the trial expeditiously, within two months.

10. These are the reasons for my short order dated 15.7.2024 where the applicant was admitted to post-arrest bail in the subject crime.

JUDGE

Shafi