

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS
B.A No.S-111 of 2024

(Ghulam Nabi alias Gulan Vs. The State)

B.A No.S-125 of 2024

(Naveed Vs. The State)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 06.08.2024

Mr. Ali Hassan Chandio, Advocate for the applicants

Muhammad Khan Complainant present in person.

Mr. Shahzado Saleem, A.P.G Sindh

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ORDER

Adnan-ul-Karim Memon, J. The Applicant Ghulam Nabi alias Ghulan and Naveed are seeking post-arrest bail in F.I.R No.49 of 2024 for the offense under section 397, 34 PPC at Police Station Tando Jan Muhammad. However, during the investigation, the Investigating officer added section 337 A(i) 337-L(ii) PPC in the charge sheet. Their earlier bail plea was declined by the trial court vide orders dated 21.05.2024 and 4.6.2024 on the premise that the applicants had robbed the complainant and recovery of the motorcycle was effected from the possession of applicant Naveed, including robbed cash Rs.20,000/-, and pistol used in the crime with live 03 live bullets from the possession of applicant Ghulam Nabi.

2. Learned counsel for the applicants/accused argued the case against the applicants/accused is false, fabricated, based on malafide, and concocted. He further went on to say that FIR is delayed for about one day without plausible explanation; that the alleged recovery has been foisted upon the applicant, that no specific role is assigned to the applicants and case against them calls for further inquiry into guilt. Learned counsel added that FIR is false, no incident took place, and the complainant has raised his no objection if the applicants are granted bail in the matter. He prayed for a grant of bail to applicants.

3. Learned counsel for the complainant files an affidavit on behalf of the complainant and states that due to the intervention of Naikmard, they have patched up the matter outside the Court and has no objection if the bail plea of the applicants is accepted. However, the learned Additional Prosecutor General has opposed the grant of bail to the applicants and submitted that the applicants are not entitled to a concession of bail based on the concessional statement.

4. I have considered the arguments advanced by learned counsel for the applicants/accused and learned Addl. PG as well as the complainant who is present in person and perused the material available on the record.

5. In the present case, though the applicants are nominated in the FIR yet upon their arrest there appears no test-identification parade has been held. It is well settled that in such circumstances, 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].

6. The record shows that the applicants are neither previous convicts nor hardened criminals and have been in continuous custody since their arrest and are no longer required for any investigation nor the prosecution has claimed any exceptional circumstance, that could justify keeping them behind bars for an indefinite period pending determination of their guilt as complainant has come forward with new plea and raised his no objection if the bail plea of the applicants is accepted which prima-facie shows his intention not to prosecute them so no fruitful result will come out to keep them inside jail. Nonetheless, the truth or otherwise of charges leveled against the applicants 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 applicants/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].

7. In the given circumstances, this court is faced with the question of what is the value of compromise, effected between the parties at the bail stage. At this stage, I am not in agreement to grant bail based on compromise as it is against the public policy as well as the law laid down by the Supreme Court in the case of Tariq Mehmood vs. Naseer Ahmed (2016 PLD SC 347) as the only offense under section 397 PPC is not compoundable and entails punishment up to seven years, but the circumstances brought on record suggests that no useful purpose would be achieved by placing the applicants behind the bars, especially, when the investigation is completed and the applicants are no more required for investigation and the complainant does not intend to prosecute the applicants more.

8. 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).

9. In view of the peculiar facts and circumstances of the case, I am of the tentative view that prima facie, the applicants have succeeded in bringing their case within the purview of further inquiry in terms of the statement of the complainant and as such they are entitled to bail and for this reason, the applicants are admitted to bail in the subject crime subject to their furnishing solvent surety in the sum of Rs.2,00,000/- each and P.R. Bond in the like amount to the satisfaction of the trial Court.

10. The observation recorded hereinabove is tentative and shall not prejudice the case of either party at trial. However, the learned trial Court shall endeavor to examine the complainant positively within one month. If the charge has not been framed, the same shall be framed on the date so fixed by the trial Court, and a compliance report shall be submitted through the Additional Registrar of this Court. The Additional Registrar shall ensure compliance with the order within time.

JUDGE

“Ali Sher”