

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.784 of 2024
(Muhammad Touqeer v The State)

Date	Order with signature of Judge
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For hearing of bail application

Date of hearing & Order: 14.10.2024

Mr. Muhammad Nawaz Chohan advocate for the applicant / accused
Mr. Ali Hyder Saleem, APG along with SSP Arab Mahar, Investigation
Central, SIO/IO Rana Muzaffar, PS Surjani, SIO/SI Attar PS Sir Syed.

Adnan-ul-Karim Memon, J. – A bail application under Section 497
Cr.P.C. has been filed by Muhammad Touqeer, seeking post-arrest bail in
FIR No.439/2023, registered under Sections 392/397/34 PPC at Police
Station Sir Syed Karachi.

2. This Court rejected the applicant's previous bail plea on September
22, 2023, and ordered the trial court to examine the complainant within a
month. An excerpt of the order is reproduced as under:-

*“ In view of the above learned counsel for the
applicant/accused has failed to make out a case for further
inquiry at this stage. As a result, the instant bail application
is dismissed. However, the trial court is directed to examine
the complainant within one month and if the charge is not
framed the same shall be framed on the next date of hearing,
in case the trial court fails to comply with the court order,
the applicant can ask for bail, which shall be decided on
merit and the observation recorded by this court will not
come in his way.*

3. The accusation against the applicant is that he in connivance with
his accomplices snatched the complainant's and his friend's mobile phones
at gunpoint. After a chase, by the police, the accused were apprehended,
and upon searching them, a pistol, ammunition, and additional mobile
phones were found. The complainant identified the items as those that
were stolen. An FIR was registered against the accused under sections
393, 397, and 34 of the Pakistan Penal Code. A separate FIR was also
registered against co-accused Muhammad Faraz under section 23(1)-a of
the Sindh Arms Act due to the lack of a license for the recovered pistol.
The seized motorcycle was also taken into custody under section 550 of
the PPC.

4. The applicant has filed a second bail application due to the trial
court's non-compliance with previous court orders as discussed supra. This
court directed the trial court to complete the trial by September 28, 2024.
However, the trial court submitted a progress report explaining the delay
on October 1, 2024. The applicant / accused, being aggrieved by and
dissatisfied with the non-compliance of the directions of this Court

preferred the instant bail application. The trial court reported that 100 new cases are filed monthly, but the current case is nearing completion. The remaining witness testimony is set for October 22, 2024, after delays due to a strike and procedural requirements.

5. The applicant was arrested on June 20, 2023, but the trial has not been concluded despite court orders. This significant delay in the criminal proceedings raises serious concerns about the efficiency of the justice system. The non-compliance with court orders and the submission of incomplete reports suggest a lack of interest in addressing the issue, which is of paramount consideration as the applicant has pleaded his case based on fresh ground which was not earlier available to him when his previous bail plea was declined. Primarily, under Article 203 of the Constitution of Pakistan, this court can also supervise and control subordinate courts and is responsible for ensuring the fair administration of justice. Mostly, prolonged delays in criminal cases can have significant consequences for both the accused and the victims, including violations of their rights and potential prejudice to the case. Besides failure to follow the orders of this Court is a serious matter and can undermine the integrity of the judicial system even in bail matters which is a judicial decision and cannot be ignored under any circumstances by the district judiciary.

6. Learned counsel for the applicant / accused has argued that the applicant is innocent and has been falsely implicated in this case. The police, with malicious intent, have framed him to enhance their performance record. The applicant has committed no crime and has been wrongfully accused by the complainant, who at the initial stage colluded with the police and thereafter recoiled his statement in his deposition; the complainant stated that two individuals on a motorcycle snatched his and his friend's phones. However, he later claimed that he recovered these phones at the police station and that all the papers were prepared there, which contradicts his initial statement. The complainant's statements regarding the arrest memo and site inspection are also questionable due to the above reasons as these documents were prepared and signed at the police station, suggesting potential manipulation of police record. The complainant previously filed an affidavit stating that the applicant was/is not the real accused as portrayed by the police. This contradicts other evidence in the case. The applicant was not specifically identified as a perpetrator in the FIR, arrest memo, or witness statements. The recovered items were not found on him, indicating a possible frame-up. The witnesses' testimonies are inconsistent and unreliable. They provide conflicting accounts of the incident and the recovery of the evidence. The

applicant has no criminal record and has not absconded. He poses no threat to the prosecution or witnesses. Despite eight months, the prosecution has presented limited evidence, and the witnesses' testimonies do not support the charges against the applicant. There is no substantial evidence linking the applicant to the crime. The applicant has been detained for an extended period without a trial, which constitutes a hardship. The previous bail plea was denied due to the complainant's purported identification of the accused during examination-in-chief. However, in the cross, he recoiled from his statement and the complainant later filed an affidavit stating that the accused was not the real culprit, which factum requires further inquiry. The defense also highlighted that the case properties were not produced in sealed condition and that the complainant's and witness's statements contradicted each other regarding the number of assailants and the recovery of stolen items. Learned counsel has also referred to the examination-in-chief of the complainant as well as PW-2 Abdul Ghaffar and other witnesses and asserted that the case properties were produced in unsealed condition. He further pointed out that the complainant reported that two persons came on the motorcycle and they snatched his mobile phone so also from his friend. The complainant stated that from the search of co-accused Muhammad Nadir two mobile phones were recovered about him and his friend. He also referred to the statement of PW-2 Abdul Ghaffar, who stated that at PS he was informed and shown about the recovery of case property from accused persons. He further stated that the Investigating Officer did not conduct any proceedings in his presence. PW-2 Abdul Ghaffar stated that he was shown case property at the PS as well as police prepared a memo of arrest and recovery there. He further stated that a sketch of the case property was not prepared in his presence. He prayed for allowing the bail application on the aforesaid fresh grounds.

7. Learned APG has pointed out that though the complainant has been served previously now he is reluctant to put his appearance perhaps due to a compromise with the accused person however he opposed the grant of bail to the applicant at this stage on the ground that the applicant was arrested on the spot, hence, he is not entitled to the concession of bail besides the non-compliance of the court order is not fatal for the prosecution. He prayed for the dismissal of the bail application.

8. The only question of law that requires determination, therefore, is whether the delay in the conclusion of the trial that occurs for no fault of the accused following the rejection of his first bail application can be considered "fresh ground", not earlier available to him, for entertaining his

second bail application, within the meaning and scope of that term as elaborated in the case of *Nazir Ahmed v. The State* **PLD 2014 SC 241**.

9. It is by now well settled that an accused can maintain a subsequent bail application, at the post-arrest stage, only on the strength of fresh ground, accrued after dismissal of his first plea. In the case reported by *The State through Advocate General N.W.F.P. vs. Zubair Ahmed and others* (**PLD 1986 SC 173**) the Supreme Court has held that second or the subsequent bail application to the same Court shall lie only on a fresh ground, which did not exist at the time when the first bail application was made, however in the present case learned counsel for the applicant has pointed out fresh grounds which were not available to the applicant at the time of filing of his first bail application. He nevertheless emphasized that directions given by this Court while disposing of the bail application of the applicant have not been complied with, as such, the applicant is entitled to bail on this ground alone. I am unable to subscribe to such submission of the learned counsel for the applicant. Non-compliance with the directions issued to the trial Court to examine witnesses within some specified time cannot be fatal in terms of the ratio of the judgment rendered by the Supreme Court in the case of *Nisar Ahmed vs. The State and others* (**PLD 2016 SC 11**). However, in the present case, the applicant has shown multiple fresh grounds for consideration of his request for grant of the bail application. The case against the applicant prima facie is based on two versions due to the complainant's negation of the story put forward by the police and the affidavit of no objection beside the PW Abdul Ghaffar has narrated a different story including the statement of PC Warid Ali and SIP Muzzafar Ali. The accused's previous bail was denied, but new evidence now warrants reconsideration of his bail plea. Therefore, under such circumstances, this court has left with no option but to release the applicant on post-arrest bail in the subject crime the trial court is still in chaos and the reasons assigned are not sufficient to keep the applicant behind the bar for an indefinite period for the simple reason that the Supreme Court has ruled that delays in trials violate the constitutional rights of the accused to liberty, fair trial, and dignity. These rights are protected by Articles 9, 10A, and 14 of the Constitution. The court has emphasized that the presumption of innocence must be upheld until guilt is proven. Therefore, any procedural steps taken during the trial must be progressive and expansive of the accused's rights. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the cases of *Sayeda Ayesha Subhani Vs. The State* **PLD 2023 SC 448** and in the case of *Shakeel Shah v. State* **2022 SCMR 1**.

10. In view of the above fresh grounds, which were not earlier available to the applicant as he is admitted to post-arrest bail in the subject crime on the fresh ground as discussed supra subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of the learned trial Court. Meanwhile, the trial Court is again directed to conclude the trial within one (01) month and submit a report.

11. This Criminal Bail Application stands disposed of in the above terms.

JUDGE

Zahid/*