

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

2nd Criminal Bail No.S-217 of 2024

Applicant: Ali Dino son of Muhammad Pathan Kori
through Mr. Mumtaz Ali Brohi, Advocate.

Complainant: Dr. Saleemullah son of Hakeem Haji Saadullah Shaikh
through Mr. Ghulam Rasool M. Narejo, Advocate.

The State: Through Mr. Ali Anwar Kandhro, Additional Prosecutor
General, Sindh.

Date of hearing: 07.11.2024

Date of Order: 07.11.2024

ORDER

ARBAB ALI HAKRO, J.-Through instant Criminal Bail Application, applicant/accused Ali Dino seeks post-arrest bail in Crime No. 06/2023, under Sections 452, 395, 397 P.P.C, registered at Police Station Naudero. His bail plea has been declined by learned Additional Sessions Judge Ratodero vide Order dated 30.12.2023, hence this bail application.

2. The facts, in a nutshell, are that on 15.01.2023, the complainant, along with his sons Safiullah and Salamullah, was sleeping in the house when, at about 03:00 a.m., he woke up to some noise and saw on the light of a bulb that five unknown accused persons with open face were standing in the courtyard of the house, three of them were armed with Kalashnikov, one was armed with Pistol and torch in his other hand, whereas one was having scissor for cutting the locks and iron rod/big nail, they will be identified if seen again. The armed accused pointed their weapons at the complainant party and directed them to remain mum; two accused went to the second floor, brought the rest of the members of the family down, and kept them hostage in a room. One armed accused was standing over the members whereas other accused broke open the locks of showcases and safes of the house and robbed fifty tola gold ornaments, some cash amount, Prize Bonds, one licensed Pistol, one Rado watch and one Seiko Five watch and went away, the complainant party due the fear of weapons could not chase them; however, lodged instant F.I.R.

3. Learned counsel submits that the applicant/accused is innocent, and he has been falsely implicated in this case by the complainant with *mala fide* intention and ulterior motives; that the applicant/accused is a police constable and was on duty at Naudero city; that there is a delay of two days in the lodgment of the F.I.R; that both the eyewitnesses are real sons of the complainant, hence they are set up and interested; that the name of the present applicant/accused does not transpire in the F.I.R. and the robbed property has been foisted upon him; that co-accused Nadeem Ali has already been granted bail vide Order dated 19.07.2024; therefore, under the rule of consistency present applicant/accused is also entitled for the same relief. He further submits that the applicant/accused has been behind bars since his arrest, i.e. 01.02.2023, without any progress in the trial, and his right to a fair trial is being infringed. Therefore, he may be admitted on bail. In support of his contentions, learned counsel has relied upon the case reported as **Maqsood Ahmad v/s. The State (2012 MLD 351), Ashiq Muhammad v/s. The State and another (2010 P.Cr.L.J. 475)**.

4. On the other hand, the learned counsel for the complainant has vehemently opposed the bail application and submitted that huge quantity of valuables have been robbed from the house of the complainant, who is a respectable doctor; that two bail applications of the applicant/accused have been dismissed by the trial Court and one bail application has been dismissed by this Court; that though co-accused Nadeem Ali has been granted bail in this crime but he is confined in Central Prison, Karachi in two other cases and his case is distinguishable from the case of the applicant/accused as the recovery of the property has been made from the present applicant/accused whereas no recovery was made from co-accused Nadeem Ali; that no ill-will or *mala fide* on the part of the complainant has been pointed out by the counsel for the applicant to falsely implicate the present applicant/accused in the present case; that the offence is falling within the prohibitory clause of Section 497 Cr.P.C and since no fresh ground has been agitated, therefore, instant bail application may be dismissed.

5. Learned Additional Prosecutor General has also opposed the grant of bail to the applicant/accused on the ground that the offence falls within the prohibitory clause of section 497 Cr.P.C and no fresh ground has been pointed out by the counsel for the applicant and the case of the co-

accused is different from this one as no recovery was effected from him, therefore, the applicant/accused is not entitled to the concession of bail.

6. I have heard arguments of the learned counsel for the parties and have perused the material available on record with their able assistance, and the case law relied upon.

7. The perusal of the record reflects that this is the second bail application filed by the applicant before this Court. The first bail application bearing No.S-141 of 2023 was dismissed on merits by this Court vide an order dated 26.06.2023. The arguments put forth by the learned counsel for the applicant regarding the merits of the case are evident from the record that these arguments were thoroughly addressed during the consideration of the applicant's first bail application. It is settled law that a second bail petition repeating the same grounds taken earlier is not competent. Moreover, the grounds raised by an accused in a subsequent bail application available at the time of filing the earlier bail application could also not be treated as fresh grounds nor urged to seek the same relief. Reliance in this regard is placed on the cases reported as **Shahbaz Akmal v. The State and another (2023 SCMR 421) and Nazir Ahmed & another v. The State & another (PLD 2014 Supreme Court 241)**. In the present case, no fresh ground was pleaded or argued by the learned counsel for the applicant except that the directions given by this Court while disposing of the applicant's first bail application have not been complied with. Upon perusal of the progress report submitted by the learned Presiding Officer of the trial court dated 10-09-2024, it is evident that the delay in the conclusion of the trial cannot be attributed to any lack of diligence on the part of the prosecution or the trial Court. The report shows that the applicant, Ali Dino, is confined at Central Prison Larkana, and co-accused Nadeem is confined at Central Prison, Karachi while the remaining accused, Wajid Ali, Zulfiqar and Rano, have been declared proclaimed offenders. The case was duly fixed for the framing of the charge; however, the custody of the accused, Nadeem, was not produced from the Central Prison, Karachi. This delay is attributable to logistical issues concerning the production of the accused rather than any procedural inefficiency or negligence. Even otherwise, non-compliance of the directions issued to the trial Court to conclude the trial within a specific period cannot be considered valid ground for granting bail to an accused as

it falls outside the parameters established by Section 497 Cr.P.C as held by Honourable Supreme Court of Pakistan in the case of **Nisar Ahmed vs The State and others** reported in **PLD 2016 SC 11** as under:-

"We have scanned the material placed on record and are unable to subscribe to such submissions of the learned ASC. Neither non-compliance of the directions issued to the trial Court to conclude the trial expeditiously or within some specified time can be considered as valid ground for grant of bail to an accused, being alien to the provisions of Section 497 Cr. P.C. nor filing of direct complaint will have any bearing as regards earlier bail refusing orders, which have attained finality, unless some fresh ground could be shown by the petitioner for consideration of his request for grant of bail afresh, which is lacking in the present case. This being the position, leave is refused, and this petition is dismissed."

In another case of **Muhammad Aslam Vs. The State and others** reported in **PLD 2015 Supreme Court 41**. It has been held that:-

"It is not disputed that the first petition for bail (Criminal Miscellaneous No. 12657-B of 2013) filed by the appellant for his post-arrest bail in the present criminal case had been dismissed by the Lahore High Court, Lahore as having been withdrawn vide Order dated 23-10-2012 after the learned counsel for the appellant had argued the case at some length but had remained unable to persuade the said Court to grant bail to the appellant. The second petition filed by the appellant (Criminal Miscellaneous No. 5422-B of 2013) seeking the selfsame relief, did not disclose any fresh ground for admission of the appellant to bail and, thus, in view of the law declared by this Court in the case of Nazir Ahmed and another (supra) the said second petition filed by the appellant before the Lahore High Court, Lahore was not maintainable.

In this view of the matter, we have not been able to take any legitimate exception to the impugned Order passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore on 7-6-2013. This appeal is, therefore, dismissed."

8. Considering the above facts and circumstances, I do not find substance in this bail application, and the same is hereby **dismissed** with direction to the trial court to conclude the trial within three months, failing which the learned trial Judge shall submit a report to this Court containing the reasons for its non-conclusion.

J U D G E