

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail No.S-303 of 2024

Applicants: 1. Ali Asghar, son of Abdul Rehman
2. Ali Raza, son of Akram alias Abdul Rahman
Both by caste Channa
Through Mr. Razi Khan Nabi Bux R. Chandio, Advocate.

Complainant: Farhan Chutto.

The State: Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General,
Sindh.

Date of Hearing: 31.10.2024

Date of Order: 31.10.2024

ORDER

ARBAB ALI HAKRO, J.:- Through instant Criminal Bail Application, the applicants seek Bail Before Arrest in the case emanating from F.I.R No.37/2024, registered at Police Station Warrah, District Kamber-Shahadadkot under Sections 380, 457 P.P.C. Their bail plea has been declined by learned Additional Sessions Judge-II, Kamber vide Order dated 22.05.2024, hence this bail application.

2. The facts in a nutshell as per F.I.R. are that the complainant is residing in Barbi Muhalla, Warrah town, the house of his cousin Waleed is situated in village Abdul Majeed Chutto, who along with his family is presently residing in Saudi Arabia, and the complainant is looking after Waleed's house. On 12.04.2024, the complainant and his uncle Imamuddin went to Waleed's house and found that the lock of the main door was break opened; they went inside the house and noticed that some household articles were missing, marks of tyre prints of loader rickshaw outside the house were also seen; meanwhile, Raja son of Muhammad Sharif and Abdul Wahid, son of Ghulam Rasool, both by caste Chutto, met with the complainant and disclosed that they were going to perform fajar prayer when accused Muharram Ali son of Haji Malook, Ali Raza son of Akram, Ali Asghar son of Abdul Rehman all by caste Chutto and one unknown culprit were committing theft from Waleed's house; that loader rickshaw parked outside house was loaded with household items, therefore, accused went

away towards southern side. Subsequently, the complainant informed Waleed about such an incident, who directed him to get the F.I.R. lodged. Hence, instant F.I.R. has been lodged.

3. Learned counsel for the applicants has contended that the applicants/accused are innocent and have been falsely implicated by the complainant with malafide intention and ulterior motives; that there is delay of 14 days in lodgment of the F.I.R. and no plausible explanation has been furnished by the complainant; that nothing incriminating has been recovered from the applicants/accused; that all the sections with which the applicants/accused are charged do not fall within the ambit of prohibitory clause of section of 497 Cr.P.C; that the witnesses are related to each other; that the incident is unseen and the complainant has lodged instant F.I.R. on hearsay evidence. Therefore, interim pre-arrest bail granted to the applicants/accused vide Order dated 27.05.2024 may be confirmed on the same terms and conditions.

4. The complainant appeared in Court on 09.09.2024 and showed full confidence in the learned Deputy Prosecutor General, Sindh. The Learned Deputy Prosecutor General, Sindh, has frankly conceded to the grant of bail to the applicants/accused on the ground that the offence does not fall within the prohibitory clause of section 497 Cr.P.C.

5. Heard learned counsel for the applicants, learned Deputy Prosecutor General Sindh, and perused the material available on record.

6. From the perusal of the record, it appears that although the names of the applicants/accused transpire in the F.I.R. However, it is admitted that the complainant himself is not an eyewitness of the alleged incident. The story of the incident he gave in the FIR is entirely based on the information provided to him by his relatives, Raja and Abdul Wahid. Thus, the same is hearsay evidence, which is generally considered weaker and less reliable than direct evidence. Besides that, the incident occurred on 12.04.2024 while the complainant lodged the FIR on 27-04-2024 after a delay of about fourteen (14) days without any plausible explanation. The complainant has narrated in the FIR that on 11-04-2024, he locked the house and went away, and on the next day, when he returned, he found the locks of the outer door were broken, and the door was open. He later met his relatives Raja and Abdul Wahid, who disclosed to him that at the time of

Fajar prayer around 05:00 a.m., they saw by the source of electric bulbs that a loader rickshaw parked outside the house of Waleed, which was loaded with articles and accused Muharram Ali and Ali Raza sitting on it while accused Ali Asghar brought a battery from the house and loaded it onto the rickshaw and went away. It is surprisingly observed that the complainant's relatives saw the accused committing the theft, but they did not inform the complainant or the police immediately. It is beyond comprehension that someone who witnessed a theft would not immediately report it to the property owner or the Police authorities. If viewed together, these factors make the case of applicants/accused one of further enquiry falling within the ambit of Section 497(2) Cr.P.C. However, the said facts would be determined after recording pro and contra evidence of the witnesses.

7. It is settled law that while granting post and pre-arrest bail, the merits of the case can be touched upon by the Courts. Reliance is placed on **Miran Bux Vs. The State (PLD 1989 SC 347), Sajid Hussain @ Joji Vs. The State (PLD 2021 SC 898), Javed Iqbal Vs. The State (PLD 2022 SCMR 1424) & Muhammad Ijaz Vs. The State (2022 SCMR 1271)**. Even otherwise, the offence with which applicants/accused are charged does not fall within the prohibitory clause of section 497(1), Cr.P.C, and grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception. A person's liberty is a precious right that cannot be taken away without exceptional foundations.

8. In view of the above, instant Criminal Bail Application is allowed. The interim pre-arrest bail earlier granted to the applicants/accused vide Order dated 27.05.2024 is hereby confirmed on the same terms and conditions.

9. Needless to mention, the observations made hereinabove are tentative and would not influence the learned Trial Court while deciding the case of either party at trial.

Judge