

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-945 of 2024
(Fareed Jatoi Vs. The State).

Crl. Bail Application No.S-956 of 2024
(Aijaz Butt Vs. The State)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Hearing of post-arrest bail

- 1. For orders on office objections at flag ‘A’
- 2. For hearing of bail application.

14-03-2025

Mr. Ajeebullah Junejo, advocate for applicant Fareed Jatoi in Crl. Bail Application No.S-945/2024.

Mr. Rukhsar Ahmed Junejo advocate for applicant Aijaz Butt in Crl. Bail Application No.S-956/2024.

Mr. Wajid Ali Shaikh, advocate for complainant.

Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

Ali Haider ‘Ada’,J:- By this single order, I intend to dispose of above mentioned Bail Applications, as separately filed by the applicants Fareed Jatoi and Aijaz Butt in Crime No. 123/2024, registered at Police Station Patni, offence u/s 395, 342 PPC. Prior to this, their post arrest bail applications were declined by learned Ist Additional Sessions Judge/Ist Model Criminal Trial Court Sukkur vide order dated 05-12-2024.

2. Brief facts of the prosecution case are that complainant Abdul Majeed Laskani lodged the FIR on 22-10-2024 alleging therein that his brother Sikander Ali owns Bedford Truck bearing Registration No. AE-0426 and the complainant used to drive the same. On 01-10-2024 complainant along with cleaner Raza Muhammad after loading Cotton from Khipro City proceeded towards RK Factory Company Salehpat. On 02-10-2024 at evening time, they reached at RK Factory Salehpat and unloaded the cotton. After receiving fare amount of Rs. 94,000/- from the Manager of said Factory, they were returning back towards their home. At about 11:00 pm, when they reached at National Highway Road overhead

bridge, where one off white color Old Pajero came in front of them and signaled to stop. They stopped their Truck, alighted from it and saw on the head lights of vehicle that 05 unidentified persons alighted from the Pajero and disclosed that complainant party have killed a person by an accident and made them sit in the Pajero. Then accused persons took out pistol from their folds and warned the complainant party to keep silent. Due to fear of weapons, they kept quiet and saw that one person drove away their Truck towards Karachi, while the accused persons took the complainant party beside Qasim Shah Petrol Pump; they got them down from Pajero and led them towards hills, where they tied their hands. The accused persons robbed cash of Rs. 120,000/- one touch mobile and keypad mobile from complainant and one keypad mobile from PW Raza Muhammad, then fled away after leaving them in the hills. The complainant party untied their hands with the help of each other, and then returned back to their home, where they narrated the incident to Sikander Ali. After some time, the complainant came to know that accused Fareed Jatoy, Ghulam Sarwar, Yaseen Panjabi, Dhani Bux and two unidentified persons have committed the above offence. Then complainant party approached Fareed Jatoy at his village, where 04 persons met with them, who were identified to be the same accused, who committed the offence. The complainant party demanded the robbed Truck and other articles from the accused; they admitted the guilt and kept them on hollow hopes. After refusal, the complainant appeared at Police Station and lodged the above said FIR.

3. After registration of FIR, the complainant recorded his further statement on 23-10-2024, during investigation the applicants were arrested and after completing investigation, the challan was submitted.

4. Mr. Ajeebullah Junejo learned counsel for the applicant Fareed Jatoy contended that applicant/accused is innocent and falsely been implicated in this case; that there is inordinate delay of about 20 days in lodging the FIR and such delay has not been explained by the complainant; that during investigation nothing any robbed articles has been recovered from the possession of the applicant/accused; further adds that the case of the prosecution depends upon the version of complainant and one PW who are driver and cleaner of the vehicle; that police recorded the statement of one Sikander who is owner of Truck in which he shown his presence at

the place of incident while FIR and statement of cleaner are totally silent about his presence; that the punishment for life or imprisonment not less than 04 years and more than 10 years has been provided, so lesser sentence be considered at bail stage. In this regard he placed his reliance on cases of *Shehzore and another Vs. The State (2006 YLR 3167)* and *Muhammad Nawaz alias Karo Vs. The State (2023 SCMR 734)*. Lastly he prays for grant of post arrest to the applicant/accused.

5. Mr. Rukhsar Ahmed Junejo, learned counsel for the applicant/accused Aijaz submits that the name of applicant Aijaz is not transpired in the FIR, even such FIR is silent about any feature of the applicant. He further submits that the complainant in further statement which was recorded after one day delay, did not point out that applicant drove away the vehicle from the place of incident, as after the arrest no any recovery was affected from the applicant/accused and applicant is no more required for any further investigation. He placed his reliance upon the cases of *Muhammad Rafique Vs. The State (1997 SCMR 412)* and *Kashif Vs. Imran and another (2024 SCMR 589)* and he also prays for grant of post arrest bail of applicant/accused Aijaz.

6. Mr. Wajid Ali Shaikh who is appearing on behalf of the complainant contends that there is no any enmity between the parties to falsely involve the applicants/accused as the offence u/s 395 PPC does falls under the prohibitory clause, so applicants/accused are not entitled for grant of concession of post arrest bail. He relied upon the case reported as *2015 MLD 677, 2015 MLD 886, 2007 YLR 514, 2015 YLR 2111 and 2017 P.Cr.L.J 21*.

7. Syed Sardar Ali Shah Rizvi learned Additional Prosecutor General supports the order of trial Court and further submits that the incident took place at National Highway in broad day light and applicants are specifically nominated in FIR as well as in further statement of the complainant, hence they are not entitled for concession of bail.

8. Heard learned counsel for the parties and perused the material available on record.

9. The case of prosecution depends upon the evidence of complainant, cleaner who shown their presence at the place of incident, while the

presence of witness Sikander is in question as his name is not mentioned in FIR as an eyewitness, despite his testimony indicating that he was present at scene of offence.

10. The applicants/accused have been arrested, however no recovery of any kind of robbed article or crime weapon have been taken place from their possession, while the investigation has concluded. There is delay of 20 days for lodgment of FIR, which lacks credible justification. The involvement of applicant in FIR without any supporting evidence is no ground for refusal of bail. The unknown accused who operated the Truck/vehicle remains unidentified, as for applicant Aijaz, the complainant did not acknowledge that he drove away the Truck. In case of *Kashif Vs Imran and another (supra)* the Hon'ble Apex Court held as under:-

"3. The FIR states that three sub-machine guns (SMGs)/7.62 bore weapons and one 9mm pistol, gold ornaments and mobile phones were stolen when the dacoity was committed. In view of the fact that the description of the petitioner was not mentioned in the FIR, this brings into question the identification parade. And none of the stolen goods were recovered from the petitioner, which makes this case one of further inquiry.---"

11. In case of *Abid Ali alias Ali Vs. The State (2011 SCMR 161)* wherein it was held as under:-

"The learned State Counsel read the supplementary statement of the complainant recorded in the case but this statement did not disclose as to how the complainant came to know the name of the appellant when in fact she was neither known to the appellant nor she disclosed his name in the FIR lodged in the case. We are, therefore, of the view that at this stage, it cannot be said that the accused is reasonably believed to have committed the offence which fell within the prohibitory clause of section 497, Cr.P.C."

12. The bail does not mean acquittal of accused whether the custody of accused is handed over to the surety from Government. Mere nature of crime is heinous is not a ground to refuse the bail. The bail cannot be withheld as punishment, the liberty of a person is a paramount consideration. Reliance is placed on the case of *Manzoor Vs. The State (PLD 1972 SC 81)*.

13. According to the prosecution, the mobile phones were also snatched, however, the investigation appears to have made no efforts to block the Sim Cards or to track the suspect using mobile location data,

further there has been no report to the authorities regarding stolen/snatched of mobile phones. It is established that Pakistan Telecommunication Authority (**PTA**) has launched a new automated Lost and Stolen Device System (**LSDS**) for blocking of lost, stolen and snatched mobile phones, the same is an automated system and integrated with PTA's Device Identification, Registration and Blocking System (**DIRBS**) that allows user to request the blocking of lost, snatched and stolen mobile phones by filing a request with PTA through online Complaint Management System (**CMS**).

14. The Mobile Device Identification, Registration and Blocking Regulation 2017, (**Regulation 2017**) provided the mechanism, for reasons, Regulation No. 2(m) defines about Lost/Stolen mobile devices. It is necessary to reproduce the same, which reads as under:-

“Lost/Stolen Mobile Devices” means a mobile device reported as lost or stolen to MNOs or Authority”.

15. However, it is mandated by regulation that public be educated about the mechanism involved as provided in Regulation 2017. The SSP/Head of Police Sukkur has ensured that their Investigation Officer receive training in this area to effectively identify real culprits and Investigation Officers are obligated to ascertain facts; therefore, it is essential to them to be well versed in modern devices, equipment and their functionalities.

16. It is well established principle of law that benefit of doubt can even be extended at bail stage. Reliance is placed upon case of *Naveed Sattar Vs. The State* (2024 SCMR 205).

17. In view of the foregoing reasons, the applicants/accused named above have make out their case for grant of post arrest Bail. Accordingly, both the above captioned Bail applications are hereby allowed and applicants named above are admitted to post arrest Bail subject to furnishing their solvent surety in the sum of Rs. 100,000/- (One lac) each and P.R Bond in the like amount to the satisfaction of Learned trial Court.

J U D G E