

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. B.A. No.S-903 of 2016.

Zulfiqar alias Bhutto Bhatti

Versus.

The State.

Applicant : Zulfiqar alias Bhutto Bhatti	Through Barrister Muhammad Azmatullah Channa, Advocate.
The State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing	11.04.2017.
Date of order	11.04.2017.

ORDER

MOHAMMAD KARIM KHAN AGHA, J.-Through instant application, applicant (Zulfiqar alias Bhutto) seeks post arrest bail in Crime No.315/2016, registered at Police Station Kotri, under section 397 PPC. Earlier his bail application was declined by learned Additional Sessions Judge-II, Kotri, by order dated 23.09.2016.

2. Precisely relevant facts are that complainant Ashfaque used to drive a taxi namely, black colored Corolla bearing No.ASD-183, whose owner is one Shahzad Qureshi. On 31.07.2016, his taxi was parked at Taxi Stand Civil Hospital when two men and one woman came and hired his taxi for a destination towards the colony behind Bab Salahuddin, Kotri. He took the said passengers in his taxi, however, when they reached near the said colony, the said persons asked him to stop. All of a sudden, two persons emerged from sugarcane crop, took out pistols from folds of their shalwar / trouser and in collusion with the passengers who were seated in the car, tried to snatch money from him; however, on resistance, they caused pistols' butt on his head and snatched Rs.4500/-, one Q-mobile cell phone and the Corolla car from him. Thereafter, one man and woman embarked on car and went away, while three culprits went inside the sugarcane crop. Complainant informed his owner. Police came there and apprehended one culprit from inside the sugarcane crop. Thereafter, complainant lodged F.I.R. After usual investigation the case was sent up for trial.

3. Learned counsel for the applicant inter alia, contended that the applicant has been falsely implicated by the police due to monetary dispute with the complainant ; that alleged offence does not fall within prohibitory clause of section 497 Cr.P.C; that

no specific role has been assigned to the applicant; that no robbed property was recovered from the applicant thus, no incriminating material is available on record against him; that no independent witness has been cited; that no ID parade was held; that the only evidence against him is that of a co-accused; that the complainant allegedly received a head injury at the time of the incident but there was no medical evidence to support this; that the case against the applicant requires further inquiry and for all the above reasons the applicant should be enlarged on bail.

4. In support of his contentions learned counsel has placed reliance on **Naeem Akhtar v. The State** (1996 SCMR 511) and **Muhammad Bashir Guraya v. Raja Muhammad Irshad and another** (2005 YLR 1220) and Articles 34 and 38 of the Qanun-E-Shahadat Ordinance 1984

5. Learned A.P.G. for the State after going through the record does not oppose the grant of bail to the applicant.

6. I have heard the learned counsel for the applicant, APG, perused the record and considered the relevant law.

7. As per settled law I have only made a tentative assessment of the material placed before me and this order shall not prejudice the case of any party at trial which shall be decided by the trial court on merit based on the evidence before it.

8. It appears that the applicant is named in the FIR and has been given a specific role in the incident and this was the main reason why post arrest bail was declined to him by the Additional Sessions Judge-II, Kotri vide order dated 23-09-2016.

9. Notwithstanding the fact that the applicant has been named in the FIR and has been given a specific role in the commission of the offense under S.397 PPC it is observed that the said section concerns robbery or dacoity with attempt to cause death or grievous hurt which carries a sentence which shall not be less than 7 years. As such prima facie the offense falls within the non prohibitory clause and in such cases as laid down by **Tariq Bashir v State** (PLD 1995 SC 34) as a general rule bail should be granted in such cases **unless** exceptional circumstances exist. In this case in my view no exceptional circumstances seem to exist.

10. In addition it appears that no identification parade has been held and that the applicant has been implicated in the FIR by co-accused Ali Gul. It is settled law that the evidence of a co-accused will not be sufficient to convict that

accused unless corroborative evidence is available which prima facie appears to be lacking in this case. In this regard reference may usefully be made to **Pir Mazhar's case** (1992 P.Cr.LJ P.1910)

11. Thus, based on the particular facts and circumstances of this case I am of the view that it is a case of further inquiry and as such the applicant is enlarged on post arrest bail, subject to furnishing solvent surety in the sum of RS 200,000 and PR bond in the like amount to the satisfaction of the trial court.

12. The above are the reasons of short order passed in Court today, whereby the applicant was granted post-arrest bail in the sum of Rs.200,000/- (Rupees two lac) subject to furnishing solvent surety and P.R. Bond in the like amount to the satisfaction of the trial Court.

Bail application stands disposed of.