

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Appl. No.S-1208 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing.

08.09.2014.

Mr. Pir Bux Bhurgri Advocate for the applicant

Mr. Shahid Ahmed Shaikh Assistant P.G.

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NAZAR AKBAR J: Applicant seeks bail in crime No.107/2011 of P.S. A Section Latifabad u/s 17(4) of Offence against Property (Enforcement of Hudood) Ordinance, 1979, and Section 324, 34 PPC.

2. I have gone through the FIR and other material available on record and heard counsel for the parties.

3. Learned counsel for the applicant has contended that there is unexplained delay of 42 hours in lodging of FIR of dacoity and the accused was not nominated in the FIR, however, on next day i.e. 07.05.2011 he was arrested and since then he is in jail. Police has submitted challan after inordinate delay and almost after one year on 09.04.2012 charge was framed by the learned Sessions Judge, Hyderabad in S.C. No.54/2012, but till date not a single prosecution witness has been examined. Learned counsel has also filed copies of as many as 31 summons/ NBWs issued to the complainant Muhammad Mujahid and witnesses but no one has been examined by the trial court. He has further contended that at the time of occurrence of offence, the accused was below 18 years of age as he was born on 21.08.1996 and the date of

offence is 05.05.2011. He filed birth certificate to confirm the age of the applicant and also report of Superintendent Youthful Offenders Industrial School Hyderabad that he was confined with them and his conduct was quite satisfactory.

4. Learned Assistant P.G when confronted with the question of more than three years delay in trial, he had no answer and showed his ignorance about the position of the trial, therefore, he was directed to call the I.O. and examine the file of the learned trial court before 11.00 a.m. After tea break, he has conceded that there is no progress in the matter since framing of charge as the witnesses are not attending the trial court. He has examined the police file and has not disputed the fact that the accused is youthful offender.

5. From the record and contention raised by the learned counsel for the parties, I have observed as under:-

(i). That admittedly the accused has not contributed in the delay of more than three years in the proceeding of case in crime No.107/2011 and he is in jail since 07.05.2011, therefore, his case falls within the third proviso (b) of section 497(1) Cr.P.C.

(ii). The accused has already been granted bail in connected case u/s 23-A of Sindh Arms Act by the trial court.

(iii) The role firing was not assigned to the applicant in the FIR.

(iv). I have also examined the charge sheet filed with this Bail application and a copy provided by the learned APG, which is blank about date of preparation and presentation of the charge sheet as well as date and time of occurrence and report at the bottom of the charge sheet and

record does not show that any efforts were made for arrest of absconding accused shown in the charge sheet.

(v). The mashirnama of place of incident which was prepared after 42 hours of incident clearly shows that complainant did not produce empties of bullets.

(vi) It is alleged that the accused ran away from the scene of incident leaving their motorcycle Honda 125 black colour but mashirnama of place of wardat is silent about recovery of bike from the place of incident.

6. In view of the above circumstances, I am of the view that the applicant has made out a case for grant of bail. Accordingly, applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of the trial court.

7. Needless to say that the observation made hereinabove are tentative in nature and would not affect the merits of the case at trial.

JUDGE

A.K