

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1579 of 2020

Date Order with Signature(s) of Judge(s)

Applicants : (i) Pir Bux son of Nato Khan, (ii) Ashiq son of Gul Muhammad, (iii) Ranjha son of Qadir Bux, through Ms. Sadia Naseem, Advocate.

Respondent : The State through Mr. Khadim Hussain, Kooharo, Additional Prosecutor General, Sindh.

Date of hearing : 02.11.2020

Date of Order : 02.11.2020

ORDER

Abdul Maalik Gaddi, J. Through instant bail application, applicants/ accused (1) Pir Bux, (2) Ashiq and (3) Ranjha seek post arrest bail in Crime No.158 of 2020 registered at police station Samanabad under Sections 392/34/397 of PPC. Prior to filing this bail application, applicants/ accused approached to the trial Court for grant of bail, but the same was dismissed vide order dated 24.07.2020 and 24.09.2020 respectively.

2. The allegations against the applicants/accused as per FIR lodged by the complainant Adeel Khan are that on 04.06.2020 as per routine he opened his shop at 1030 hours and he was dealing with customers meanwhile at about 1115 hours, four persons on two motorcycles, young age came and on gun point started looting customers and out of them one person entered into shop and on gun point snatched mobile phone with credit amount of Rs.250,000/-, mobile and cash amount of Rs.250,000/- from the complainant.

3. Ms. Sadia Naseem, learned Counsel for the applicants/accused has contended that applicants/accused are innocent and have been falsely implicated in this case by the complainant due to ulterior motives; that neither names of applicants nor any huliya or specific role has been mentioned in the FIR; that no any identification parade before any judicial magistrate has been held; that from the bare study of the FIR, it is clearly transpired that the applicants/accused are not arrested from the place of incident or while they were committing such offence, the applicants involved in this false and

fabricated case without any evidence and recovery, therefore, the case is highly doubtful and it need further inquiry; that FIR has been lodged against the unknown persons and as per FIR, the complainant has miserably failed to held the identification parade held before the concerned Magistrate which shows that applicants are not the persons who robbed the complainant and the prosecution to show their efficiency implicated them in this case; that co-accused Mitho has already been granted bail by the trial Court vide order 21.07.2020, therefore, following the rule of consistency, the present applicants are also entitled for same relief. In support of her contentions, she has relied upon the following case laws:-

- (i) ***Muhammad Nadeem Javed v. Nisar Ahmed Khan and another*** reported as **2004 P.Cr.L.J. 58;**
- (ii) ***Farman Ali v. The State*** reported as **1997 SCMR 971;**
- (iii) ***Abdullah alias Sardar alias A. Sattar v. The State*** reported as **2010 YLR 126;**
- (iv) ***Allah Wasaya v. The State*** reported as **2004 P.Cr.L.J. 1659 [Lahore];**
- (v) ***Shah Nawaz Bajwa v. The State*** reported as **2006 P.Cr.L.J. 116;**
- (vi) ***Abdul Rehman alias Sain v. The State*** reported as **2016 YLR 32 [Sindh];**

4. Conversely, Mr. Khadim Hussain Kooharo, learned Additional Prosecutor General, Sindh has vehemently opposed this bail application on the ground that applicants/accused have been arrested in this case which appears to be heinous and serious in nature; that case is at initial stage and if they are granted bail, certainly, they will repeat the offence.

5. I have heard the learned Counsel for the parties at considerable length and have also examined the police file, so made available before me.

6. It is noted that case has been challaned and present applicants/accused are no more required for further investigation. It is also noted that neither the names of applicants are appearing in the FIR, nor their description/features are disclosed in the FIR. As per police papers, applicants were arrested on 17.07.2020 and

nothing were recovered from them. As observed above, applicants were not nominated in the FIR in such situation, holding of identification test would necessary in cases where names of the culprits were not given in the FIR. Holding of such test was not only a check against fake implication, but was a good piece of evidence against genuine culprits. Holding of identification test, could not be dispensed with simply because accused, who had already committed the robbery, had been subsequently found in possession of robbed articles.

7. It is also noted that co-accused Mitho almost on same facts has already been granted bail by the trial Court vide order 21.07.2020, therefore, following the rule of consistency, the present applicants are also entitled for same relief. It has vehemently been argued by the learned Additional Prosecutor General, Sindh that these applicants have also involved in other criminal cases and if bail is granted to them, they would jump the bail bond and would attempt to tamper the prosecution evidence, therefore, they are not entitled to any indulgence in the matter of bail. I, however, not felt persuaded to agree with the learned Additional Prosecutor General, Sindh in this regard for the reasons that in my humble opinion, prior to conviction, it is presumed that every accused is innocent. Insofar as the case in hand is concerned, despite repeated queries by this Court, learned Additional Prosecutor General, Sindh has failed to establish that the applicants were ever convicted in any case registered against them, therefore, they cannot be refused bail merely on the ground that certain other criminal cases have been registered against them. In this regard, I am supported with the case of ***Jafar @ Jafri v. The State*** reported in **2012 SCMR 606**.

8. As observed above, nothing was recovered from the applicants and their names are not appearing in the FIR, so also, the co-accused Mitho almost on same facts has already been granted bail by the trial Court vide order dated 21.07.2020, therefore, the present applicants are entitled for same relief.

9. For what has been discussed above, I have no doubt in my mind to hold that the applicants have made out a case for further inquiry into their guilt within the meaning of section 497(2), Cr.P.C. Consequently, this bail application is allowed and the applicants are allowed post-arrest bail subject to their furnishing bail bonds in the

sum of Rs.50,000 (rupees fifty thousand only) *each* with one surety in the like amount to the satisfaction of the learned trial Court.

10. Before parting with this order, it is observed that the observations made in this order are tentative in nature and the same would have no bearing on the outcome of the trial of the case. It is made clear that in case, if applicants/accused during proceedings before the trial Court, misuse the concession of bail, then the trial Court would be competent to cancel the bail of applicants/accused without making any reference to this Court.

JUDGE

*Faizan A. Rathore/PA**