

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE ATHAR MINALLAH

CRIMINAL PETITION NO. 1392 OF 2022

(On appeal against the order dated 05.09.2022
passed by the High Court of Sindh, Circuit Court
Hyderabad in Criminal Bail Application No. S-
760/2022)

Muhammad Nawaz @ Karo

... Petitioner

Versus

The State

...Respondent(s)

For the Petitioner: Malik Altaf Hussain Kandawal, ASC

For the State: Mr. Zafar Ahmed Khan, Addl. P.G.
Mr. Nabi Bux, SI

For the Complainant: Mr. Junaid Iftikhar Mirza, ASC
Syed Rifaqat Hussain Shah, AOR

Date of Hearing: 08.12.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 05.09.2022 passed by the learned Single Judge of the learned High Court of Sindh, Circuit Court Hyderabad, with a prayer to grant post-arrest bail in case registered vide FIR No. 05/2022 dated 11.05.2022 under Sections 395/342/506-II PPC at Police Station Thebath, District Jamshoro, in the interest of safe administration of criminal justice.

2. Briefly stated the allegation against the petitioner is that he along with co-accused while armed with firearm robbed Toyota Corolla car of the complainant along with cash amounting to Rs.65000/- and a driving license.

3. At the very outset, it has been argued by learned counsel for the petitioner that the petitioner has been falsely roped in this case against the actual facts and circumstances. Contends that the crime report was lodged after an inordinate delay of more than nine months for which no plausible explanation has been given. Contends that during investigation, no incriminating material was recovered from the petitioner, which could connect him with the commission of the crime. Contends that the learned High Court while declining bail to the petitioner has not followed the guidelines issued by this Court for the safe administration of criminal justice, therefore, the same may be set at naught and the petitioner may be released on bail.

4. On the other hand, learned Law Officer assisted by learned counsel for the complainant vehemently opposed the petition. It has been contended that although the crime report was registered with an inordinate delay of more than nine months but there was no mala fide on the part of the complainant. It has been contended that the complainant was himself trying to find the robbed property and when he came to know that it was the petitioner who robbed his car, he approached him but the petitioner kept him on false hopes, thereafter, he lodged the crime report.

5. We have heard learned counsel for the parties at some length and have perused the available record with their able assistance.

As per the contents of the crime report, on 26.07.2021 the petitioner along with co-accused while armed with firearms robbed Toyota Corolla car of the complainant along with Rs.65000/- and a driving license. However, the formal crime report for the same was lodged on 11.05.2022 after a lapse of nine months and sixteen days. The only explanation given by the complainant is that he was himself trying to find the robbed property. When he got to know that it was the petitioner who has allegedly robbed his car, he approached him to return his property and on his refusal he lodged the crime report. We are afraid, this explanation cannot be accepted. The record is silent as to on which date, the complainant got the information and when did he approach the petitioner.

There is also nothing on record to indicate as to why the petitioner kept mum for such a long period of time and did not even bother to inform the Police. We have been informed that no recovery has been affected from the petitioner despite of the fact that he remained with the police on physical remand for a considerable period of time. So far as 'criminal intimidation' is concerned, the same has been defined in Section 503 PPC. A bare perusal of this provision of law makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) PPC would not be applicable and the only provision which will remain in the field is the overt act, which is committed in consequence of criminal intimidation. The petitioner is behind the bars for the last more than five months. This court has time and again held that liberty of a person is a precious right, which cannot be taken away unless there are exceptional grounds to do so. Merely on the basis of bald allegations, the liberty of a person cannot be curtailed. In these circumstances, the petitioner has made out a case for bail as his case squarely falls within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt, which even otherwise does not fall within the prohibitory clause. Grant of bail in such like cases is a rule whereas refusal is mere an exception.

6. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned order dated 05.09.2022. The petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.100,000/- with one surety in the like amount to the satisfaction of learned Trial Court.

JUDGE

JUDGE

JUDGE

Islamabad, the
8th of December, 2022
Approved For Reporting
Khurram