

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.517 of 2009

Date _____ Order with signature of Judge _____

FOR HEARING.

27.05.2009:

Mr. Rab Nawaz Khan, advocate for applicant.

Mr. Sardaruddin Qureshi, advocate for the State.

This bail application under Section 497, Cr.P.C. has been filed by applicant Fida Hussain in FIR No. 183/2006, Police Station Steel Town (AVCC), which basically says that:

"Today, I, P.I. Jehanzaib Khan posted at ACLC Karachi along with police officials, Sub-Inspector Shahid Mehmood, ASI Gulab Chandio, ASI Ajmeer Khan, PC Sultan No. PC-1765, PC Danish PC-23190, Ali Dost 11602 were busy in prevention of crimes, and searching in the absconding accused of cases, registered at AVCC, in Government mobile, then reached at Sohrab Goth, received information through informer that accused Fida Hussain alias Mer Jatt involved in the heinous crimes of kidnapping in interior Sindh will go to Thatta by his vehicle.

On information reached at Quaidabad Chowrangi at 10:00 and started search through police officials.

One car No.ACC-796, Maker Suzuki Mehran white colour, sitting two persons proceeding to Thatta through National Highway was pointed out by informer, gave signal to stop the car, but driver of such car except to stop, made fast speed. Therefore, we police officials followed the such car by Govt. Mobile, and reached at Quaidazam Park, National Highway, at 1215 hours, seeing police party, accused persons started firing on police party with deadly weapons, I, inspector in self defense through 09 MM Pistol and through Govt. weapons of police officials made firing for the arrest of accused persons, meanwhile car of above number parked at Quaidazam Park National Highway, and the person sitting with the seat of driver seat absconded in street after making firing on police party. The person, who sitting in driving seat disclosed his name Fida Hussain alias Mir Jatt son of Wiryan, with the help of police officials, apprehended. Due to firing non-availability of private witnesses, in the presence of police officials, ASI Ajmeer Khan, ASI Ghulam Chandio taken his personal search, then from the right hand of accused Fida Hussain

recovered 30 bore pistol, load magazine, 04 rounds, during the further search of vehicle car, recovered 06 Rocket, one Rocket Launcher, 150 bullets of Kalashnikov in green colour bags, according to memo. Further search of vehicle, inside driving seat, under "Paieydan" 03 empties of Mouzer 30 bore, Close Belt, and two empties of Kalashnikov were found.

Further search of accused recovered cash Rs.2300 from him. He has also disclosed the name of absconding accused Mian Bux Khoso. Act of accused falls in U/S 353/324/34, 13-D, 13-E, Arms Ordinance, 4/5 Explosive Act. Therefore, according to memo arrested. Recovery have been dispatched separately. Car was seized in U/S 550 Cr.P.C. in police custody."

In essence, allegations against the accused is of firing ^{at the police} while he was going in his ~~vehicle~~ car along with his companions. On search of his ~~vehicle~~ car, a pistol, Kalashnikov with bullets and a rocket launcher were recovered.

According to learned counsel for applicant, police have falsely implicated him in this case and if it is the case of any counter firing, further enquiry needs to be made. He has relied on the case of ILLAHI BUX VS. THE STATE (2001 P.Cr. L.J. 1731) in this respect. He has also pointed out that despite this fire fight, there were no injuries to any party and no vehicle was damage by any counter firing, which in itself he alleges, is suspicious. He submits that there is no Ballistic Expert report and that in the challan only 30 bore pistol and three empties have been shown.

Learned counsel for the State vehemently opposes the bail as this is a most serious crime. Bail was refused by the learned trial Court on the basis that bail could not be granted as the offence falls within the prohibitory clause of Section 497, Cr.P.C. Learned counsel for the State, however, concedes that bail can be granted under Section 497, Cr.P.C. if it is a case of further enquiry.

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Having heard the arguments of the applicant and the State counsel and reviewed the documents placed on record and the relevant case law, I find most troubling fact in this case is that the accused has been in jail since 19th October, 2006 but as yet not a single witness has been examined in the case though over two and half years have lapsed. It is the obligation of the prosecution to prove its case against the accused and under the Constitutional no one ^{person} ~~one~~ should be deprived of his liberty unless in accordance with law. In bailable cases, bail is a rule rather than exception. Although this is a non-bailable case, I am of the view that it is a case of further enquiry and that the prosecution has failed to proceed with the case expeditiously.

Accordingly, the applicant Fida Hussain is enlarged on bail upon his furnishing surety in the sum of Rs.2,00,000/- (Rupees Two Lac Only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

The bail application stands disposed of.

