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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Cr. Bail Applications No.63 to 65/2016
Muhammad Zohaib

Vs.

The State

Cr. Bail Applications No.490 to 492/2016
Imran Tahir Shaikh

Vs.

The State

Date of hearing:	10-05-2016.
Date of Order	24-05-2016
Applicants:	Through Mr. Muhammad Akram, Advocate for applicants.
Respondent:	Through Ms. Ali Hyder Saleem, APG for State alongwith Mazhar Hussain Alvi PDSP, PI Zakaullah Sangi and Inspector Javed Anjum.

ORDER

Mohammed Karim Khan Agha, J. By this common order, we intend to dispose of above bail applications moved on behalf of the applicants under section 497 Cr.P.C.

2. The charges against the applicants/accused namely Muhammad Zohaib and Imran Tahir Shaikh, as per FIR No.189/2015, u/s 353/324/186/34 PPC lodged at PS Kalri are that the police party headed by ASI Ishaque left the police station for patrolling in the area to prevent any crime. During patrolling ASI Ishaque received spy information that two accused persons having arms and ammunition are standing at Shah Waliullah Road, Near Mama Hotel, Kalri, Lyari, Karachi with intention to

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commit some offence. On such information, they reached at the appointed place at about 0030 hours and found two persons who they tried to apprehend by encircling them. However when these two persons saw the police party they started firing upon the police party with intention to kill them. In self defence the police returned fire. After the encounter between the police and the two persons at about 0040 hours both accused persons have been arrested along with hand grenade, cracker with weapon. On inquiry they disclosed their names as Imran Tahir Shaikh @ Iffi s/o Muhammad Tahir Shaikh and Muhammad Zohaib @ Kala s/o Muhammad Akram. On search in presence of PC Maula Bux 4415 and PC Muhammad Umer 252 30-bore pistol without number with magazine two bullets one bullet in chamber loaded and from pant right pocket one rifle with grenade were recovered from the possession of accused Imran Tahir Shaikh and from accused Muhammad Zohaib one 30-bore pistol two bullets in magazine one live bullet loaded and one in chamber and one rifle grenade were recovered. The accused on request failed to produce license of weapons. As such a case being crime No.189/2015 u/s 353/324/186/34 PPC and 7 ATA and along with separate FIR's bearing crime No's 190/2016 to 193/2016 for recovery of illegal arms and ammunition and explosives were registered against them u/s 23(i) A of Sindh Arms Act & u/s 4/5 Explosive Act.

3. Learned counsel for the applicants/accused contended that the applicants/accused are innocent and falsely implicated in these cases by the police with malafide intention. He argued that the complainant and the remaining witnesses are police officials as well as interested witnesses and there is no independent evidence against the applicants. He further argued that this is a case of ineffective firing as none from either side has received firearm injury. He next argued that the mother of one of the applicants also made applications to IG Sindh, SSP South, SHO PS Nabi Buksh on 04.07.2015, subsequently on 12.07.2015, applicants have been involved in these false cases and now by the order of IG Sindh and SSP South inquiries have been ordered which are under way and in progress, as the accused persons were allegedly arrested by unknown police personnel on 03.07.2015. He also contended that there is clear violation of section 103 Cr.P.C. and the applicants are in jail and challans have not been submitted as yet before any court of law and if the applicants are kept in jail for

any further period it will not serve any purpose and the case does not fall under Anti-Terrorism Act but the police with mala fide intention booked them.

4. Learned counsel for the applicants/accused in support of his submissions placed reliance on the case of **Maulana Abdul Aziz v. The State** (2009 SCMR 1210).

5. Mr. Ali Hyder Saleem, learned counsel appearing on behalf of the State argued that sufficient material is available on record to connect the applicants/accused to the commission of the offence, therefore, the learned trial court has rightly declined bail to the applicants/accused vide impugned bail order dated 03-12-2015 and thus they are not entitled for concession of bail.

6. As noted above an earlier bail application moved on behalf of the applicants/accused before the learned Anti-Terrorism Court No.III, Karachi was dismissed by order dated 03.12.2015. However in these bail applications fresh additional material regarding one of the applicant's mother's application has been placed on record which was not before the trial court. Hence these bail applications are maintainable

7. We have considered the submissions raised by the learned counsel for the applicant/accused, learned APG for the State, perused the record and the authorities cited by them at the Bar.

8. At the outset it is made clear that we have only made a tentative assessment of the material placed before us and this order shall not prejudice the case of either party at trial which shall be decided by the trial court based on the evidence before it.

9. It would appear that these five FIRs have all been registered as a result of the same incident. In essence it seems that the applicants/accused on being approached by a police party opened fire upon them and the police party retaliated in self defence. After the brief encounter both the applicants/accused were apprehended by the police and they both were found to have explosive substances and illegal firearms in their possession without license for the same.

10. This is a case of ineffective firing whereby during the course of encounter no person from either side received any firearm

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injury. It is also observed that the FIRs were lodged on 12.7.2015, however, the mother of the applicant No.2 (Muhammad Zohaib) had filed an application/complaint with IG Sindh, SSP South and SHO PS Nabi Bux on 04.07.2015 concerning whereabouts of the applicants who according to her had been picked up by unknown police personnel on 03.04.2015

11. This complaint was entrusted for inquiry to SIP Qadir Tanoli of Crime Branch-I, during the course of enquiry, the enquiry officer called the complainant and recorded her statement, and she stated that her son Muhammad Zohaib with his friend namely Imran are presently in Lockup of Kalri Police Station. The enquiry officer enquired from Kalri Police Station and found that both the applicants are booked in these FIRs. According to the record the enquiry officer on many occasions bound down the SIO of PS Kalri Zakaullah Sangi and SIP Rustam for recording their statements but they failed to record their statements. Furthermore, they have not responded to any message of the enquiry officer SIP Qadeer Tanoli of Crime Branch-I in this respect. As such it was recommended that departmental action be initiated against SIO Zakaullah Sangi and SIP Rustam.

12. It appears that despite the encounter lasting around 10 minutes with deadly weapons being used by the both sides neither the applicants nor any of the police party seems to have received a scratch let alone a firearm injury. Likewise it appears that the police mobile was not hit by any bullet and the rifle grenade was recovered without any rifle/rocket launcher so it could not be fired. It also appears that the mother of the applicant No.2 (Muhammad Zohaib) had filed an application with IG Sindh, SSP South and SHO PS Nabi Bux on 04.07.2015 (before the lodging of the FIR's on 12.07.2015) concerning whereabouts of the applicants who it appears at the time were already in police lock up. It also seems that the IO and SIO avoided to appear before the internal inquiry into the application made by the mother of the applicant No.2 and departmental action was recommended against SIO Zakaullah Sangi and SIP Rustam, the SI/SIO PS Kalri respectively, where the five FIRs were registered against the applicants/accused persons.

13. The above narrated circumstances in our view creates doubt regarding the applicants connection with the commission of any of the offences mentioned in all five FIRs and as such this appears to

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be a case(s) of further inquiry. Furthermore, the applicants are no longer required for investigation purposes and are currently in judicial custody.

14. For the reasons mentioned above in our considered view the applicants have both successfully made out a case for post arrest bail and they are both hereby enlarged on post arrest bail in respect of all five of the aforementioned FIRs subject to both of them furnishing solvent surety in the sum of Rs.100,000/- (Rupees One lac) each in respect of each FIR and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court. However, the trial Court is directed to decide this matter within 6 months of the date of this order. The office shall supply a copy of this order to the concerned trial court for immediate compliance which shall send weekly reports to this Court through MIT II

Dated: 24-05-2016