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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 Application No.339/2016

Muhammad Arshad Iqbal

Vs.

The State

Date of hearing:	23-05-2016.
Date of Order	02-06-2016
Applicant:	Through Mr. Mumtaz Ali Khan Deshmukh, Advocate for applicant.
Respondent:	Through Mr. Muhammad Saleem Akhtar, Addl.P.G. for State.

ORDER

Mohammed Karim Khan Agha, J. Through this bail application under section 497 Cr.P.C. the petitioner seeks post arrest bail in FIR No. 573/2015, under section 4/5 Explosive Act, r/w Section 7 ATA, registered at police station Peerabad, Karachi West.

2. On 19.09.2015 at about 0120 hours an FIR was lodged by the complainant ASI Imtiaz Khali posted at P.S. Peerabad, Karachi West, stating therein that he alongwith his subordinate staff were busy in patrolling in the area for preventing any crime. During patrolling when they reached at main road Sector 4/E, Hafizabad Post Office, Orangi Town, Karachi they came across one person riding a motorcycle who was behaving suspiciously and stopped him. On inquiry he disclosed his name as Muhammad Arshad Iqbal @ Arshad Bachanga s/o Muhammad Iqbal. From his personal search a hand grenade was recovered from his right side pocket of his shirt which was kept with intention to be used to create terror and fear amongst the public. His act comes u/s 4/5 Explosive Act and as such the applicant was arrested in this crime while the recovered motorcycle bearing Registration No.KED-0263 super power 70 black colour was taken into police custody as on demand the accused was unable to produce documents in respect of its ownership. The said motorcycle is shown u/s 550 Cr.P.C. Thereafter they returned back to the police station where the

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complainant came to know that the applicant is involved in 1) FIR No.90/1995 u/s 302/34 PPC, 2) FIR No. 105/95 u/s 302/34 PPC, 3) FIR No. 282/2001 u/s 302/34 PPC, 4) FIR No. 307/2001 u/s 302/365/34 PPC, 5) FIR No. 17/2011 u/s 302/324/34 PPC, 6) FIR No. 233/2014 u/s 6/9-C under Narcotics Act and 7) FIR No.234/2013 u/s 23(i)-A SAA. Thereafter he lodged this FIR against the applicant. After completion of investigation the applicant has been challaned in this case on 17.11.2015.

3. Learned counsel for the applicant contended that the applicant is innocent and has committed no offence and the prosecution has falsely implicated him in the present case with malafide intention to achieve ulterior motives. It was further contended that much prior to the instant case the applicant was arrested on 09-09-2015 by Pakistan Rangers personnel when he was coming out of city courts gate No.3, thereafter the applicant's mother filed one C.P. No.D-5631/2015 in connection with his abduction before this Court which issued a notice to the respondents on 17.09.2015 and that it was after the issuance of notice from this court that this false and fabricated case has been registered against him and as such the applicant is entitled for the concession of bail as clearly this false case has been malafidely foisted upon him. He next argued that all the witnesses are interested personal or police personnel, the prosecution did not bother to associate any private independent witness which is in clear violation of section 103 Cr.P.C. He further argued that the prosecution has filed final challan in which in many cases either the applicant was acquitted and in some cases he is on bail and the trial is continuing. He lastly contended that this is a case of further inquiry and therefore the applicant may be admitted on bail.

4. On the other hand, Learned State counsel has vehemently opposed the bail application on the grounds that the applicant was apprehended from the spot, the recovery has been affected from his possession, he has been assigned a specific role in the commission of the offence, he is nominated in the FIR and as such the applicant is not entitled for concession of bail as sufficient material is available on record against him to connect him to the commission of the crime.

5. We have considered the submissions of learned counsel for the applicant, learned APG for the State, and scanned the record.

6. The earlier bail application moved on behalf of the applicant before the learned Anti-Terrorism Court No.V, Karachi in Special Case No.AJ-53/2015, was dismissed vide order dated 04.02.2016.

7. It appears that the applicant was caught red handed by the police with both a hand grenade and a stolen motor bike in the early hours of 19-9-2015. The argument that no independent mushirs were associated with the recovery in our view is not particularly relevant due to the lateness of the time of arrest when very few people would be around. In any event police witnesses are as good as any other witnesses.

8. Based on the material before us we are of the view that there is sufficient material to connect the applicant to the offense for which he is charged.

9. It is also apparent from the record that the applicant is a habitual offender of crimes of a very serious nature including murder and in our view appears to be a hardened criminal.

10. The applicant has contended that he was already detained in ranger's custody when his arrest was shown and that this case is a false one and has been foisted upon him. In this respect he has produced various documents in support of his contention. It is well settled law that at the bail stage the Court is not to undergo a deep appreciation of the evidence thus in our view it would be more appropriate if the applicant, if so advised, produced these documents at trial in support of his defense.

11. Thus, in our view since there is sufficient material to connect the applicant to the crime and the applicant appears to be a habitual offender and a hardened criminal who has been booked in many serious crimes including murder we are not inclined to grant the applicant bail and accordingly the applicant's application for post arrest bail is dismissed.

12. We note however that the charge has been framed and the case is ripe for the recording of evidence as such we direct the trial court to conclude the trial of the applicant within 3 months of the date of this order subject to submitting fortnightly compliance

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reports to MIT II of this Court. A copy of this order shall immediately be sent to the concerned trial court hearing this case for compliance.

13. We have only made a tentative assessment of the material which has been placed before us and this order shall not prejudice either party at trial which will be decided by the trial court on merits based on the evidence before it.

Dated: 02-06-2016