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ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANO

1st. Cr. Bail Application No. S- 669 of 2023

Applicants:

Muhammad Ramzan and Zahid Hussain @ Zahid Ali both by caste Khoso, through Messrs Ayaz Ahmed Faras and Habibullah G. Ghouri.

The State:

Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General, Sindh.

Date of hearing:

30.11.2023

Date of order:

30.11.2023

ORDER

Muhammad Saleem Jessar-J. Through this bail application, applicants Muhammad Ramzan and Zahid Hussain @ Zahid Ali both by caste Khoso, seek their admission on post arrest bail in crime No.16/2023, registered at Police Station Ghora Ghat, under sections 324, 402, 148, 149, 34 PPC. The applicants as shown were arrested by the police on 16.10.2023 at 8:30 am (morning) and after completion of investigation the case has been challaned which is now pending trial before the court of Additional Sessions Judge, Kashmore *vde Sessions Case No. N/1 of 2023 re: State V. Muhammad Ramzan and others*. The applicants filed Cr. B.A.No.2010 of 2023, before the court of Sessions Judge, which subsequently was assigned to Additional Sessions Judge, Kashmore (trial court) where after hearing the parties their request for bail was declined by means of order dated 08.11.2023. Hence instant bail application has been maintained.

2. The crux of prosecution case as unfolded by the complainant/ASI Irshad Ali Sangrani, of police station Ghora Ghat are that the police party headed by complainant was on routine patrolling duty and after visiting different places when they reached at Sundrani Damdama, they received spy information that some outlaws are standing at Bjkarni curve aims to commit crime. Upon receipt of such information they proceeded towards pointed place and when at about 2330 PM they reached at pointed place and saw on the light of their vehicle and identified to each one Muhammad Raman duly armed with K.K. Zahid Hussain with DBBL gun and three unknown outlaws. Out of them one was having repeater and other was carrying SBBL gun and third was armed with pistol, whose faces were open. The police claimed to identify them as and when produced before them. It is alleged that the complainant party after alighting from vehicle introduced themselves to be police and asked the culprits to surrender but the accused in order to commit their Qatl-i-amd and to deter them from performing

their lawful duty started firing upon them which lasted for about 10 minutes. Later the accused by taking advantage of thick jungle as well darkness decamped from the scene. Hence instant case was registered by the ASI/complainant on behalf of the State.

4. After registration of the case the police have arrested both the applicants on 6.10.2023 along-with alleged offensive weapons therefore, they have also registered two separate F.I.Rs bearing crime No.17 and 18 at Police Station Ghora ghat for offence under section 23-i(A) Sindh Arms Act, 2013. After completion of investigation challan has been submitted against them.

5. Learned counsel submits that though the applicants have been shown nominated as well present at the time of alleged offence however, were not arrested or captured by the police after an alleged encounter and after about two days of the FIR they have been shown arrested on 16.10.2023 which itself show malafide on the part of police. They further submit that though the encounter between police and accused continued for about 10 minutes yet not a single injury or even scratch was caused to either side or even to the vehicle being owned by the police. He submits that in such eventuality when none from the either side had received injury the case against the applicants requires further inquiry. In support of their contention they placed reliance upon an unreported order of this Court passed on 21.11.2023 vide C.B.A.No.D-35 of 2023 re: *Noor Hassan Jaffer v. The State and case of Zabiullah alias Zubair and two others v. the State* (2021 YLR 2190). Hence, pray for grant of bail.

5. Learned Deputy Prosecutor General for the State opposed the bail application on the ground that applicants have been nominated in the F.I.R and later they have been shown arrested along with offensive weapon therefore, they are not entitled for the bail. Hence pray for dismissal of the bail application.

7. No doubt the applicants are nominated in the FIR with particular weapons as well role however, their arrest after about two days of the incident as well F.I.R show the police have cooked up instant case against them aims to show efficiency with their superiors. Per contents of the F.I.R. the applicants alongwith co-accused were allegedly standing for intending to commit a crime; however, the record /police papers does not show any offence was committed by the applicants before registration of instant case or even after registration of the case within jurisdiction of P.S Ghora Ghat which may warrant application of section 402 PPC. The police record did not show that applicants have been shown involved in any other like nature case or have already been booked for the offence of robbery/theft or previously convicted which are the basic ingredients for arraying the accused under section 402 PPC. As far as alleged encounter is

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concerned not a single injury or scratch was caused to either side therefore, application of section 324 PPC is yet to be established by the prosecution after recording evidence. As far as deterrence in performing their lawful duty as defined under section 353 PPC none of the police member or their vehicle has sustained any bullet or injury which show that applicants had deterred them whilst performing their duties hence same charge is yet to be established by the prosecution after recording evidence and then the trial court has to determine such an accusation against the accused. In case of Noor Hassn Jaffer (supra) while granting bail to said accused it has been held in Para -6 of said order in following terms:-

"No doubt the applicant has been shown to have been captured by the police after an encounter in an injured condition, but surprisingly enough to note that there was close distance between the police and the accused even then not a single bullet went to hit any of the members from police party or even scratch, which may show that the police was deterred from performing their lawful duty as claimed. In such an eventuality, application of section 353 PPC required further probe and it is yet to be established by the prosecution after recording evidence of its witnesses. As far as section 324 PPC is concerned, that too requires further probe as none from the police party had sustained any injury or even scratch on their person, through which it can be *prima facie* deduced that the applicant party had attempted to commit their *Qatl-i-amd*, which may warrant application of section 324 PPC. Whereas Section 427 PPC is to the effect of loss allegedly caused to the vehicle, same is still to be established by the prosecution and then the Trial Court to determine such an accusation against the accused".

All the PWs are from police therefore, question of tampering with prosecution evidence or absconding away on the part of accused seemingly is beyond the sight. Moreover, the case has been challaned and the applicants are also not required by the police for the purpose of investigation or interrogation. Accordingly, in view of above, I am of the considered view that the applicants have make out a good *prima facie* case for further enquiry under section 497(2) Cr.PC, hence they are entitled to be released on bail subject to furnishing their solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand only) each and PR bond in the like amount to the satisfaction of trial court.

The observations made herein above are tentative in nature and would not prejudice case of either party while deciding the case.

JUDGEMENT

S.Ashfaq/