

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail No. 1274 OF 2006

Date Order with signature of Judge

Date of hearing : 09.04.2007

Mr. Zakir Hussain Khaskheli, advocate for Applicant.

Ms. Afsheen Aman, advocate for the State.

YASMIN ABBASEY, J: Applicant Khizar Hayat has moved this bail application in a case registered against him under Sections 420, 468,471 and 467 PPC under Crime No.294/2006 at police Station Shah Latif Town, Karachi.

Case of prosecution is that on 20.10.2006 S.I. Ali Muhammad after receiving information arrested applicant Khizar Hayat from his house, who was found in possession of two arm licences in the names of Basharat Masih and Rana Muhammad Aslam issued by D.D. Kohat alongwith blank books, blank certificates of Board of Education, Karachi forged international deriving licence, blank educational certificates of NED and Dawood College and so on as mentioned in the FIR. On the basis of recovery of forged documents and a machine for preparing the same, applicant was taken into custody and case was registered against him.

Applicant at the first instance has moved a bail application before the 1st Addl. Sessions Judge, Malir, Karachi. The same was rejected on 07.12.2006, hence he has approached to this Court.

It is argued by learned counsel for applicant that applicant and his wife both are police constables and they have previous enmity with one S.I. Nasir Mehmood, who put them in unnecessary trouble that's why applicant's wife was forced to move different applications to I.G. and Naib Nazim for redress. She also approached the Provincial Ombudsman on 27.12.2005 and had also moved Cr. Misc. Application No.49/2006 but in spite of all these struggles, S.I. Nasir Mehmood have lodged FIR No.27/2006 at Police Station Sohrab Goth with the same nature of allegation as has been urged in the present case. During investigation of that case it was observed that case against this applicant under FIR No.27/2006 was registered under misunderstanding. Such report of Town Investigation Officer, Gadap Town, Karachi to the Senior Superintendent of Police, Investigation Zone-III, Karachi on 07.03.2006 has been placed on record as Annexure 'F-1', wherein it was reported that "during course of investigation it revealed that Khizar Hayat was police constable and the envelope was not belonged to him, while the same was found him also as abandoned. It also revealed that the offence was not committed by him and case was registered misunderstandingly. I.O. and SIO has requested to dispose of the same as FR C Class."

In further proof enmity as alleged in between applicant and S.I. Nasir Mehmood somehow appears to be correct in view of compromise said to had been arrived in between them on 29.01.2006 before Naib Nazim. Though this compromise before Naib Nazim apparently has no weight as under what authority Naib Nazim dealt with such

matter is not appearing. Anyhow non-denial of this Panchayat and the attempt to settle the matter through compromise in between this applicant and S.I. Nasir Mehmood at least is appearing which confirms previous dispute in between them.

Learned counsel for the applicant has also taken a plea that this applicant was arrested on 13.10.2006 and after a delay of seven days FIR was registered on 21.10.2006. Though no satisfactory evidence has been placed on record to prove the arrest of applicant on 13.10.2006 but the fact remains that within a short span of time an attempt to involve this applicant with the same nature of allegations has been made by police party and it is stated that though Naib Nazim had tried to compromise in between both the applicant and S.I. Nasir Mehmood but still S.I. Nasir Mehmood has gruded against this applicant and now through his police official friends he has booked him in the present case alongwith a case under Section 13-D of the Arms Ordinance under FIR No.293/2006. It is contended by learned counsel for applicant that though no such recovery as alleged was made from the possession of this applicant but even if for the sake of argument prosecution case is taken as correct then also House No.417, wherefrom this substance of forged documents was said to had been recovered does not belong to this applicant as applicant is residing in a house bearing No.416, Shah Latif Town that too on rent. He has further objected that though according to prosecution the area wherefrom the alleged recovery had taken place is situated in a residential populated area but in spite of that none of the inhabitants of the area was called to witness the search and recovery from the house as required under Section 103 Cr.P.C. He further pleaded that except recovery of forged documents that too from another house than the residence of this applicant, prosecution has not been able to place any person as a suspected person, who attempted to procure such forged documents from the applicant nor any witness has been pointed out by them in whose presence this applicant had attempted to sell out such forged documents for monetary gains.

Learned counsel for the State though had tried to oppose this bail application but no sufficient ground has been raised by her to controvert the allegations and arguments advanced by learned counsel for the applicant.

From the perusal of record, without going into the deep appreciation of evidence and merits of the case, it is observed that the allegations of previous enmity in between the applicant and S.I. Nasir Mehmood is appearing on record. Applications moved by applicant's wife, who too is a police personnel to different authorities against the malicious act of S.I. Nasir Mehmood against this applicant is also a part of the record, which has not been specifically denied by learned State Counsel. Institution of two different cases within a short period with the same nature of offence out of which in one case investigating officer had reported that the institution of case against this applicant under Crime No.27/2006 was because of some mis-understanding. Prosecution has also failed to clarify that how the recovery of forged documents and machine, if any, from another house than occupied by this applicant can be foisted on him with no satisfactory proof of them to be in the custody of this applicant as none of the witness of the locality where such search was made and alleged recovery said to had taken place was associated with the prosecution.

In view of foregoing reasons it was observed that prima facie applicant has a case for the grant of bail. The allegations levelled against him on the grounds discussed above creates a doubt and the applicant is entitled to take benefit of them. Hence the bail application of the applicant was allowed on 09.04.2007 and applicant was ordered to be released on bail subject to furnishing surety in the sum of Rs.4,00,000/- (Rupees Four Lac Only) with P.R. Bond in the like amount to the satisfaction of the Nazir of this Court.

Karachi,

Dated: _____

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