

**IN THE HIGH COURT OF SINDH, KARACHI.**

**Present**

**Mr. Justice Muhammad Ali Mazhar**

**Mr. Justice Adnan-ul-Karim Memon**

**1. Crl.Bail Application No.1730/2016**

Muhammad Bilal son of Haji Khan.....Applicant

V E R S U S

The State.....Respondent

**2. Crl.Bail Application No.1731/2016**

Muhammad Bilal son of Haji Khan.....Applicant

V E R S U S

The State.....Respondent

**Date of hearing: 28.12.2016 & 29.12.2016**

Mr. Waqar Alam Abbasi, Advocate for applicant  
Mr. Muhammad Iqbal Awan, APG

**O R D E R**

**Adnan-ul-Karim Memon, J:-** By this common order the above captioned bail applications are disposed off together as the same are interlinked.

1. The applicant/accused Muhammad Bilal is seeking post arrest bail in Crime No.286/2016 registered for offences under Sections 353, 324, 34 PPC read with section 7 of ATA, 1997 and in Crime No. 287/2016 under section 23(1)(a) of Sindh Arms Act, 2013, of PS Ittehad Town, Karachi.

2. The prosecution case, as set out in the above crimes is that on the complaint of Sub-Inspector Riyasat Ali of PS Ittehad Town, Karachi, the following two FIRs were lodged against the applicant with respect to the alleged incident that took place on 29.08.2016:-

i. FIR No.286/2016 registered under section 353, 324, 34 PPC read with section 7 of ATA 1997.

ii. FIR No.287/2016 registered under section 23(1)(a) of Sindh Arms Act, 2013.

3. The gist of allegations against applicant is that on 29.08.2016 at about 0030 hours, SIP Riyasat Ali along with his subordinate staff was on patrolling duty, when they reached near Peela School, Qaim Khani Colony, Baldia Town, Karachi, two persons, on seeing the police party opened fire on them with intention to kill. In self defence, the police opened fire, due to which the accused Muhammad Bilal received bullet injury on his left leg. Accused Muhammad Bilal was arrested on the spot by SIP Riyasat Ali whereas due to non-availability of private persons his personal search was conducted and recovered one pistol 30-bore CAL 30- MADE AS CHINA alongwith 04 rounds, in which 03 rounds were loaded with magazine, and one bullet was loaded in chamber from the applicant under mashirnama. The recovered articles were sealed at the spot and taken into custody for (FSL). The police took the injured accused to the Civil Hospital, Karachi for treatment of his leg injury where his Medico Legal Examination was conducted. Investigation Officer prepared mashirnama of place of incident recorded statements of PWs, interrogated accused, got conducted FSL of recovered articles and obtained Medico Legal Report of injured accused Muhammad Bilal.

4. At the conclusion of the investigation, the Investigation Officer submitted the charge-sheet in the trial court, in Crime No.286/2016 and Crime No.287/2016 against accused.

5. The accused Muhammad Bilal moved two bail applications with respect to the above crimes before the Learned Anti-Terrorism Court No. V, Karachi. The learned trial court vide common order dated 22.11.2016 dismissed both the bail applications on the ground that

the accused had been arrested on the spot after receiving injury during the encounter with the police.

6. Mr. Waqar Alam Abbasi, learned counsel for the applicant has argued that the applicant has been falsely implicated as he was picked up from his home at night by some persons on 21.08.2016 who were claiming to be government servants, his brother moved applications to the higher authorities through courier. He further argued that the police has concocted the story with malafide intention to involve the accused in the present crime along with co-accused Sajid Aziz, who also went missing on 30.05.2016 and his whereabouts remained unknown to the family, such complaint was moved to the higher authorities by his family members. He further argued that the contents of the memo of arrest reveal that 04 empties of SMG and 02 empties of 30 bore were taken into police custody and on the other hand, it is also mentioned that 11 fires of SMG were made by police in alleged retaliation but only 04 empties were shown to have been recovered from the spot which clearly makes the present case doubtful and requires further inquiry. He further argued that nothing was recovered from the possession of accused and alleged recovery of 30-bore pistol has been foisted upon applicant/accused. He further argued that the physical condition of the applicant is not good and he is not getting proper medical treatment in jail hospital. He also argued that section 324 PPC is not applicable in the present case and the police violated section 34 of Sindh Arms Act, 2013 as no private witness had been cited, so far as the alleged recovery from the possession of applicant is concerned, he emphasized that no specific role has been assigned to the applicant and the offences are not punishable with death or life imprisonment. He prayed for grant of bail to the accused in both the crimes.

7. During the course of arguments, the learned counsel for the applicant placed on record copies of two judgments i.e. judgment dated 29.06.2016, passed by learned Vth Additional Sessions Judge, Karachi Central, in Sessions Case No. 216/2014 and another judgment dated 23.02.2016, passed by learned Ist Additional Sessions Judge Karachi Central in Sessions Case No.79/2014 and robustly argued that earlier also similar cases were lodged against the applicant but he was acquitted from the charges.

8. Mr. Muhammad Iqbal Awan, learned Assistant Prosecutor General (Sindh) has opposed the grant of bail to the applicant and argued that the accused was arrested from the spot, where the police and the accused had briefly exchanged firing and that he was arrested in injured condition and from his possession, one unlicensed 30 bore pistol was recovered and that the forensic examination report in respect of the recovered articles supports the prosecution case. He further submitted that the accused has a criminal record/history and that earlier he was arrested in FIR No.94/2013 under section 353/324/34 PPC registered with PS Shahra-e-Noor Jehan and another FIR No.95/2013 under section 23(1)(a) of Sindh Arms Act, 2013 of AVCC police station Karachi. He further argued that the offences with which the accused has been charged is of terrorism and punishable under section 7 of the Anti-Terrorism Act, 1997 and fall within the prohibitory clause of section 497(1), Cr.P.C. He further argued that the prosecution has collected sufficient incriminating evidence against the applicant and if the bail is granted to the applicant he will continue to undertake the same criminal activities, which will cause harm to the public at large.

9. We have heard the learned counsel for the applicant and the learned APG for the State and have perused the material available on record and carefully considered the submissions advanced by them.

10. We are conscious of the fact that while deciding the bail application, this court has to consider the allegations made in the FIR, statements recorded under Section 161 Cr.P.C., other incriminating material against accused, nature and gravity of charge and pleas raised by the accused.

11. From a bare perusal of the contents of both the FIRs, it transpires that the present accused has been charged with the serious crime of firing at the police force, such an act is defined as an act of terrorism under section 6 of the Anti Terrorism Act, 1997 and the same is punishable under sections 324, 353 PPC read with section 7 of Anti-Terrorism Act, 1997. During the course of arguments, the learned APG invited our attention to the Medico-legal Certificate of the applicant who was brought at hospital on 29.08.2016 at about 01.12 a.m., by Ittehad Town police with the history of fresh fire arm injury over his left thigh and the examination report (FSL) of Forensic Division, Karachi, dated 05.09.2016, in respect of articles i.e., pistols, live bullets and empties recovered from accused persons as well as from the crime scene which report seems to be positive. Police papers further show that statements of prosecution witnesses supported the version of the Complainant. Such incriminating material collected by police during the course of investigation creates ground to proceed against the applicant for trial.

12. So far as the application made by the brother of accused to the learned District & Sessions Judge Karachi West on 21.08.2016, wherein he complained that his

brother had been picked up by some persons from his home and the same was forwarded to the Deputy Inspector General of Police for necessary action and report. We have seen the application placed on record but we are afraid to dilate upon the same as the fate of the inquiry has not been placed on record. So far as the medical ground is concerned and the same has been taken care of by the learned trial court on the application of the applicant.

13. Applicant has premised his case on the assertion that the Police officials have falsely concocted the case against the accused because of enmity, as the applicant was arrested from his home before the lodging of the FIRs but he has not been able to provide any satisfactory explanation as to how and under what circumstances he sustained a bullet injury on his left thigh and nothing has been placed on record to substantiate his claim of false implication in this case but on the contrary sufficient incriminating material has been collected by the police which prima facie connects applicant in the present crimes.

14. As far as non-association of private witnesses, the complainant has sufficiently explained the same in the FIRs as the incident took place at odd hours of the night, even otherwise, section 34(a) of the Sindh Arms Act, 2013 is very clear in its terms and provides:

*“all arrests and searches made under this Act or under any rules shall be executed in line with the provisions of the Code of Criminal of Procedure, 1898, except section 103 of the Code :*

*Provided that any Police officer or person present on the spot can be witness of search and recovery.”*

15. We have carefully considered the submissions of the learned counsel of the applicant and we are of the

view that the contentions raised require deeper appreciation of the evidence and we are also conscious of the fact that while deciding the bail application only a tentative assessment has to be made. In this regard, we are fortified with the case-law reported in the case of Shahzad Ahmed versus the State reported in 2010 SCMR 1221.

16. We have also gone through the judgments in which present applicant was acquitted on the benefit of doubt but his earlier acquittal in similar cases, does not justify grant of bail at this stage. The record clearly reflects that the applicant sustained injury on the spot and he was arrested. So at this stage, there are no reasonable grounds to believe that he is not involved in the alleged offences. The proviso of section 21(D) of the Anti Terrorism Act, 1997 which is the governing law clearly stipulates that:-

*Provided that if there appear reasonable grounds for believing that any person accused of non-bailable offence has been guilty of an offence punishable with death or imprisonment for life or imprisonment for not less than ten years, such person shall not be released on bail.”*

17. In view of the above facts and circumstances, we are of the opinion that the applicant/accused has not made out a case for grant of bail at this stage. Accordingly both the bail applications are dismissed. The above findings are tentative in nature which shall not prejudice the case of either party at the trial stage.

**JUDGE**

**JUDGE**