

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

Cr. Bail Appln. No.D- 15 of 2017
Cr. Bail Appln. No.D- 16 of 2017
Cr. Bail Appln. No.D- 17 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Rasheed Ahmed Soomro

Date of hearing: 14.03.2017

Date of decision: 21.03.2017

Mr. Muhammad Hashim Laghari, advocate for the applicants/accused in Criminal Bail Application No.D-15 of 2017.

Mr. Altaf Hussain Chandio, advocate for the applicants/accused in Criminal Bail Application No.D-16 of 2017.

Mr. Francis Lucas Khokhar, advocate for the applicant/accused in Criminal Bail Application No.D-17 of 2017.

Shahzado Salim Nahyoon, A.P.G for the State.

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ORDER

RASHEED AHMED SOOMRO,J- This common order will dispose of aforesaid three bail applications in Crime No.44 of 2016 registered at P.S Bodar Farm for offences under Sections 324, 353, 337-H(ii), 392, 364, 342, 147, 148, 149, 386, 120-B PPC, under Section 7 A.T.A.1997.

2 Brief facts of the prosecution case as disclosed in the FIR lodged by PC Fayaz Ahmed of PS Kunri, at PS Bodar Farm are that he along with PC Muhammad Ismail of PS Samaro and PC Ghulam Mustafa of PS Bodar Farm were deputed at police Picket 12 Mile Regulator/6 Dari Mori. On 29.12.2016 they were present on their duties when at about 2130 hours one

white Corolla Car No.BQV-835, one white colour Mehran Car No.AYA-840, and one tractor alongwith trolley came there. Accused Ghulam Mustafa, Ameer Ali, Murad Ali, Barkat Ali, Allah Dino, Shoukat, Soomro Punhal, Siraj Din, Rano Kapri, Asghar Jat, Munwar Shaikh, Punhal Bheel and Walo Kolhi got down. Accused Ghulam Mustafa was armed with rifle, Bakhshan armed with repeater, Sirajuddin, Nobat and Shoukat were armed with pistols, they started indiscriminate firing, abused them and threatened that they would open the closed regulator of Asabo Shakh, to which complainant party restrained them and told that it was illegal, on which accused Ghulam Mustafa, Amir Ali, Sirajuddin and Aslam aimed their weapons upon complainant party, abused them and asked that they would forcibly open regulator. If they resisted they would kill all the three police constables. Thereafter, they forcibly snatched government SMG Rifle from complainant and on the pointation of weapons, abducted them to the house of accused Punhal Bheel and detained them in a room and snatched mobiles from him and PC Ghulam Mustafa. After some time accused Bakhshan and Punhal Bheel came alongwith two ladies to whom they were calling with their names as Gulabi Shaikh and Seeta Kolhan, asked them to embrace them, on which lady accused embraced on the gun point of the accused. It is alleged that accused recorded their videos in mobile saying that this video would be used against the Police. It is further alleged that accused persons used to give irrigation water to different zamindars after receiving bhatta from them. Therefore, in order to restrain Police picket was established at the regulator. It is alleged that all the accused persons went away by confining police officials in a room. PC Muhammad Ismail informed about the incident to higher Police officers from his mobile phone and then by taking chance all the three Police personnel came out from the room and reached at the road, narrated such facts to their high officers, then

complainant appeared at PS and lodged FIR being crime No. 44 of 2016 for offences under Sections 324, 353, 337-H(ii), 392, 364, 342, 147, 148, 149, 386, 120-B PPC, under Section 7 A.T.A.1997 against the accused.

3. Applicants/accused applied for bail after arrest before trial Court but the same was rejected vide order dated 24.01.2017.

4. Learned Advocates for applicants/accused contended that applicants are innocent and have been involved falsely. It is further argued that it was shortage of irrigation water in Asabo Shakh, protest was made against the Irrigation officials and false FIR was lodged for harassment. He further contended that a large number of accused persons armed with deadly weapons fired upon Police officials but not a single scratch was caused to the complainant party. It is contended that it was unbelievable that applicants/accused snatched official weapon without any resistance. He further contended that on same allegations 10 accused persons named in FIR have been let off by Police and their names have been placed in column No.2, hence whole the prosecution story has become doubtful. Learned Advocate for applicants/accused in support of his contentions relied upon the cases of Muhammad Vs. The State reported in 1998 SCMR 454, Junaid & 2 others Vs. The State reported in 2000 P.Cr.L.J 1510, and prayed for grant of bail to the applicants/accused.

5. Learned Assistant Prosecutor General Sindh argued that applicants/accused fired upon complainant party with sophisticated weapons and empties have been secured from place of vardat. Learned A.P.G argued that alleged offence falls within prohibitory clause of Section 497 Cr.P.C. Learned A.P.G opposed the bail application.

6. We have heard arguments advanced by the learned Advocates for the parties and gone through the record. Admittedly, it is the case of in-

effective firing, nobody from the complainant party has received a single scratch, though a large number of accused persons allegedly made indiscriminate firing. During investigation no material has been collected against accused regarding bhatta. During investigation no video clip as alleged in FIR has been made part of investigation. Apparently, it is unbelievable that accused prepared video of strangers with wife. During the course of investigation, main accused have been let off by the Investigation Officer and their names have been placed in column No.2 of the challan-sheet. Whenever reasonable doubt arises with regard to the participation of accused in the crime or about the truth of the prosecution case, the accused cannot be deprived of benefit of bail and in such a situation it would be better to keep him on bail than in the jail during the trial. Reliance is placed upon the case of *SYED AMANULLAH SHAH versus THE STATE (PLD 1996 Supreme Court 241)*, relevant portion is reproduced as under:-

“So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused.”

7. Considering the facts and circumstances referred supra, applicants/accused, in our view, prima facie have succeeded to make out their case for grant of bail on the ground of further inquiry as envisaged under Section 497(2) Cr.P.C. Consequently, applicants/accused namely; (1)Murad Ali Banglani, (2)Allah Dino Banglani, (3)Kamaluddin, (4)Bukhshan, (5)Nek Muhammad, (6)Nobat, (7)Punhal, (8)Soomro, and (9)Walo, are granted bail, subject to furnishing solvent surety in the sum of

Rs.75,000/- (rupees seventy five thousand) each and P.R Bond in the like amount to the satisfaction of trial Court.

All the three bail applications stands allowed in the above terms.

Needless to mention that above observations are tentative in nature, trial Court shall not be influenced while deciding the case on merits.

JUDGE

JUDGE