

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

Cr. Bail Application No.D-71 of 2016  
Cr. Bail Application No.D-72 of 2016

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**DATE                      ORDER WITH SIGNATURE OF JUDGE**

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Present:

*Naimatullah Phulpoto, J*

*Rasheed Ahmed Soomro, J*

Date of hearing:                      19.01.2017

Date of decision:                      27.01.2017

Applicant:                              Ghulam Abbas  
    Through Mrs. Razia Ali Zaman Khan Patoli, Advocate.

The State:                                Through Syed Meeral Shah D.P.G.

**O R D E R**

**RASHEED AHMED SOOMRO, J-** Applicant/accused Ghulam Abbas seeks post arrest bail in Crime No. 45 of 2016 registered at P.S Site Area for offences under Sections 324, 353, 392, 337, 34 PPC and 6/7 A.T.A,1997, as well as in FIR bearing Crime No.46 of 2016 registered at P.S Site Hyderabad under Section 23-A Sindh Arms Act, 2013.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 11.09.2016 ASI Sarfraz Ali Qureshi of P.S Site Hyderabad left Police Station alongwith his subordinate staff for patrolling duty. When police party reached at Mushtaque chowk, ASI received secrete information that one Naveed s/o Yakoob Panhwar wanted in Crime No.40 of 2016 was present in the house of Abbas at Murshidabad. ASI Sarfraz Ali informed the SHO Imran Rasheed. Thereafter, ASI alongwith SHO and police party proceeded to the house of Abbas. It is alleged that Abbas was narcotic dealer, his door was knocked it was opened. It is alleged that

accused Abbas was carrying 222 Rifle, he snatched Walky-talky set and Government Rifle from P.C Waqar. It is further stated that Naveed Panhwar armed with 12 bore gun, Zaheer Abbas armed with TT pistol came out of the house and fired upon the police party with intention to kill them. It is alleged that SHO Imran Rasheed sustained firearm injuries at his leg. Police party fired in defence. In the cross firing, it is alleged that a woman present in the house sustained firearm injuries and she fell down. Thereafter, SHO Imran Rasheed and injured woman were taken to the hospital for treatment. It is mentioned that accused Naveed Panhwar, Abbas and Zaheer Abbas succeeded to run away from place of occurrence while taking benefit of darkness. It is alleged that police party chased the accused Abbas. He entered into some house and started firing upon police party. Police also fired in the self defense. In the result, it is alleged that Zaheer Abbas received firearm injury and succumbed to injuries at spot. In the F.I.R. it is mentioned that deceased Zaheer Abbas was carrying TT Pistol in his hand. Walky-talky set and SMG Rifle were also lying near the dead body. Incident was reported to the high police officials and FIR was lodged by ASI Sarfraz Ali Qureshi on behalf of the State. It was recorded vide Crime No.45/2016 for offences under Sections 324, 353, 392, 337, 34 PPC and 6/7 A.T.A. FIR bearing Crime No.46 of 2016 was also lodged by ASI Sarfraz Ali Qureshi against accused Ghulam Abbas, which was recorded under 23-A Sindh Arms Act, 2013.

3. After usual investigation challan was submitted against the accused under Sections 353, 324, 392, 337, 34 PPC and 6/7 A.T.A. before the learned Judge, Anti-Terrorism Court, Hyderabad.

4. Bail after arrest applications were moved on behalf of the applicant before the learned Judge Anti-Terrorism Court, Hyderabad, but the same were dismissed vide his orders 13.10.2016.

5. Mrs. Razia Ali Zaman Khan Patoli, Advocate for applicant/accused Ghulam Abbas contended that this was the case of fake encounter. The son of the applicant

was murdered by the police in the fake police encounter and Mst. Bakhat Rana sustained firearm injuries. It is contended that injuries sustained by Mst. Bakhat Rana have been suppressed by the Investigation Officer. It is contended that in fact D.S.P Makhdoom Mukhtiar Ali Solangi had evil eye upon the daughter of the applicant/accused to which applicant/accused had protested and in the result son of the applicant/accused was murdered in the fake encounter. Lastly, it is contended that allegation against the applicant/accused regarding causing of the firearm injury is of general in nature and from the facts of the case, the ingredients of Section 324, P.P.C are not made out and very prosecution case required further inquiry. In support of her contention she has relied upon the following cases:

- i. Dilmurad V/s. The State (2010 SCMR 1178)
- ii. Jan Muhammad alias Janan V/s The State (2016 P.Cr.L.J Note 42)
- iii. Javed V/s. The State (2016 P.Cr.L.J Note 54)
- iv. Muharram V/s. The State (2012 MLD 599)
- v. Shah Faisal V/s. The State (2011 MLD 1075)
- vi. Syed Amanullah Shah versus The State (PLD 1996 Supreme Court 241)

6. Syed Meeral Shah D.P.G. for the State argued that name of the applicant/accused transpired in the FIR and he had fired upon the police party with intention to kill. However, learned D.P.G. after perusal of the police papers informed that injuries suffered by injured Mst. Bakhat Rana have been suppressed by the Investigation Officer and her statement was also not recorded. However, learned D.P.G opposed the bail applications.

7. We have carefully heard the learned Counsel for the parties and perused the relevant record.

8. From the perusal of record it transpired that son of the applicant namely Zaheer Abbas has been killed in the alleged incident and Mst. Bakhat Rana w/o applicant Ghulam Abbas has sustained firearm injuries in the incident but the Investigation Officer has suppressed her injuries. According to prosecution case, there

was exchange of fires from both sides with sophisticated weapons in which only one S.H.O from police party received firearm injury on his non-vital part of body. Plea has been raised on behalf of accused that D.S.P had evil eye upon the daughter of accused Ghulam Abbas and in the fake encounter, son of accused was killed and his wife was injured. From the facts and circumstances of the case, apparently ingredients of Section 324 PPC and 7 A.T.A 1997 are yet to be determined at trial. It is settled law that whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth or 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 and in such a situation it would be better to keep him on bail than in the jail during the trial. Reliance has rightly been placed upon the case of *SYED AMANULLAH SHAH versus THE STATE (PLD 1996 Supreme Court 241)*.

09. For the aforesaid facts and reasons we hold that prima facie case against the applicant/accused requires further inquiry. Therefore, concession of bail is extended to the applicant Ghulam Abbas in Crime No. 45 of 2016 under Sections 324, 353, 392, 337, 34 PPC and 6/7 A.T.A,1997, subject to his furnishing solvent surety in the sum of Rs.1,00,000/- and P.R bond in the like amount. Crime No. 46 of 2016 under Section 23-A Sindh Arms Act, 2013 is connected. As bail is granted in main case, as such, for the above stated reasons bail is granted to applicant/accused in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of Trial Court.

10. Needless to mention that observation made hereinabove are tentative in nature and the Trial Court will not be influenced by it while deciding the case on merits.

Both bail applications stand disposed of in above terms.

JUDGE

JUDGE