

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Khadim Hussain M. Shaikh
Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.900 of 2018

Applicant : Muhammad Ashraf s/o Allah Bux
through Mr. Liaquat Ali Khan,
Advocate.

State : Through Mr. Ali Haider Salim, Deputy
Prosecutor General, Sindh.

Date of Hearing : 12.07.2018

Date of Order : 12.07.2018

ORDER

AMJAD ALI SAHITO, J -- Through the instant bail application, the applicant/accused Muhammad Ashraf S/o Allah Bux seeks post-arrest bail in Crime No.135/2018 registered at Police Station New Karachi, Karachi Central, for the offence under sections 4/5 of Explosive Substance Act, 1908.

2. The brief facts of the prosecution case, as depicted in the FIR, are that with reference to Crime No.133/2018 for the offence under sections 353, 324/34, PPC, ASI Faheem Ahmed along with staff PC Mushtaq 5594, PC Tasawar Hussain 1326, Driver PC on Government mobile was busy in area patrolling for prevention of crime. During patrolling reached at Column No.4 and arrested accused Muhammad Ashraf S/o Allah Rakha. From his possession, one ball bearing and motorcycle bearing No.KKF-7062 Maker Super Power used by the accused and bomb

chemical were recovered, therefore, such act of the accused falls under section 4/5 of the Explosive Substance Act, thereafter, the accused was arrested at the spot as per law and sealed the recovered articles. Investigation of the case will be conducted by SIP of the said PS. Copy of FIR will be distributed as per rules.

3. Learned counsel for the applicant/accused has mainly argued that actually the applicant/accused was arrested from his house on 31.03.2018, which fact is evident from C.P. No.D-4274/2018 filed by the mother of the applicant/accused, wherein it was alleged that on 31.03.2018 at about 6 p.m. Rangers and police officials took away the applicant/accused; that the applicant/accused is innocent and has been falsely implicated in the case; that nothing was recovered from the possession of the applicant/accused; that there is no reasonable ground to believe that the applicant/accused has committed the alleged offence, but there is sufficient scope of further inquiry into his guilt. He lastly prayed for grant of bail.

4. Conversely, learned D.P.G. for the State has contended that the applicant/accused was caught red handed and explosive materials were recovered from his possession, which reasonably connect the applicant/accused with the commission of offence. He lastly prayed that the applicant/accused is not entitled for the grant of bail.

5. We have heard the learned counsel for the applicant/accused, learned DPG for the State and examined the

material available on record.

6. It is an admitted fact that the applicant/accused has been granted bail in main case bearing Crime No.133/2018 under sections 353, 324/34 PPC r/w section 7 ATA of PS New Karachi and the present case being off-shoot of the same deserves to be released on bail on the ground of further inquiry. No material was brought on the record by the Investigating Officer to show that the applicant/accused was found connected with any militant group or had been found financier or provider any other facility to the militants. It is not disputed that none from the complainant/police party nor from the accused side has received even a scratch on his body during the encounter. In these circumstances, the applicability of the provisions of section 324, PPC to the case in hand *prima facie* appears to be suspected. So whenever reasonable doubt arises with regard to the participation of an accused in the crime or about the guilt / probability of the prosecution's 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 then in jail, during the trial.

7. From the tentative assessment and material available on the record, we hold that the case against the applicant/accused, *prima facie*, requires further inquiry as contemplated under Section 497 (2), Cr. P.C. and consequently instant bail application was allowed vide our short order dated 12.07.2018,

whereby the applicant/accused was granted bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lac only) and P.R. bond in the like amount to the satisfaction of the learned trial Court, in case based on FIR No.135/2018 under sections 4/5 of Explosive Substance Act, 1908 registered at Police Station New Karachi, Karachi Central.

8. The observations made supra are tentative in nature and the learned trial Court shall decide the case strictly on merits.

9. These are the reasons of the said short order dated 12.07.2018.

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