

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

Criminal Bail Application No.899 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.133/2018 registered at Police Station New Karachi, Karachi Central, for the offence under sections 353, 324/34, PPC.

2. The brief facts of the prosecution case, as depicted in the FIR, is that with reference to the roznamcha entry, ASI Faheem Ahmed along with staff PC Mushtaq 5594, PC Tawwar Hussain 1326, Driver HC Akbar Khan 20257 through Government mobile-I was busy in area patrolling for prevention of crime. During patrolling at about 0730 hours reached at inside the road near Town Plaza, Ali Muhammad Goth, Sector 11-E, New Karachi, they saw that two persons were coming on motorcycle in suspicious condition, the police signaled to stop them inspite

of stopping the motorcycles they started firing upon the police party with intention to kill them, therefore, the police for their defence started encounter firing upon the accused and with preplanned caught both persons. On inquiry, they disclosed their names as (1) Imran Nazir S/o Muhammad Nazir and (2) Muhammad Ashraf S/o Allah Rakha, their personal search was conducted in absence of the private witnesses and in presence of the police staff. From the possession of the accused Imran Nazir, (1) one 30 bore black dasta pistol with one bullet chamber loaded, (2) one bullet loaded without number and on its body written in English as Peshawar Call 30 and from his pocket Rs.100/- was recovered. From the possession of the accused Muhammad Ashraf S/o Allah Rakha, his motorcycle, one plastic bag was hanging after checking and bomb manufacture chemical 2 barring colour red were recovered and further search from his kameez, one ball baim barring without number and Rs.120/- from his pocket were recovered. On demand, both the accused persons could not be produced the licenses of the pistols. Accused Muhammad Ashraf used motorcycle No.KKF-7062 maker Super Power, Black colour, could not produce the documents, the act of the accused fall under section 353, 324/34, PPC and separate cases under section 23(1)(a) of Sindh Arms Act and sections 4/5 of the Explosive Act r/w Section 7, ATA, hence arrested the accused at the spot. While on the spot recovered 6 used cartridge/khol, two government SMG, 4 cartridge/khol were seized at the spot, hence the said motorcycle

was also seized 550, now returned back to the police station along with the accused and lodged the above FIR. Investigation was handed over to the SIO and copies of FIR will be distributed as per rules.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has been falsely implicated in the instant case; that the alleged encounter between the police and two armed accused persons was held, but none of the police personnel sustained any bullet injury except bullet mark on the police mobile; that the applicant/accused is not previous convict.

4. While referring the above submissions, learned DPG contended that the applicant/accused along with other his three companions had made straight firing upon the police party with deadly weapons, hence the provisions of Anti-Terrorism Act are attracted; that empties of pistols and pistols were recovered from the applicant/accused on the spot, which proved that the said encounter was held, however, he candidly submitted that previously the applicant/accused was not involved in any criminal case.

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

6. Perusal of record emanates that the alleged encounter between the police and two accused armed with weapons was

continued for so many minutes during midnight at Syed Mehmood Shah Road with the short distance between the parties, nevertheless, during the course of encounter, neither any accused nor any police personnel sustained any bullet injury and only few bullet marks were found on police mobile. In the present case, the ingredient of Sections 353 and 324, P.P.C. are yet to be determined at trial. Past record shows that neither the applicant/accused was involved in any criminal case nor was convicted for any offence. Consequently, at the most the alleged incident is a case of ineffective firing and in these cases bail should be granted as a matter of right, as liberty of any person could not be curtailed mere on assumption and presumption, while he deserves for concession of bail on merits. Challan has been submitted and applicant/accused is no more required further for the purpose of investigation to the police and all the witnesses are police officials, thus there is no apprehension of tempering with the prosecution evidence.

7. Considering the above circumstances, the applicant/accused was succeeded to make out a case for grant of post-arrest bail on the ground of further enquiry 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.133/2018 under sections 353, 324/34, PPC registered at PS 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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