

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.775 of 2018

Present:

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

Applicant : Maqbool S/o Sabir Bangali
through Mr. Altaf Hussain Khoso,
Advocate.

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

Date of Hearing : 18.07.2018

Date of Order : 18.07.2018

ORDER

AMJAD ALI SAHITO, J -- Through the instant bail application, applicant/accused Maqbool S/o Sabir Bangali seeks post-arrest bail in Crime No.746/2014 registered at Police Station KIA (East), Karachi, for the offence under section 23(1)(a) of Sindh Arms Act, 2013.

2. The brief facts of the prosecution case, as depicted in the FIR, is that on 02.10.2014 at about 1030 hours the complainant Tahir Ali lodged his report with Police Station KIA (East), Karachi, stating therein that he is residing on a rented house with (1) Ali Muhammad S/o Din Muhammad, (2) Saeed Hussain S/o Sagheer Hussain and (3) Waheed Ali S/o Muhammad Khan and they all four persons are doing private job in MN Garments Factory situated at Sector 23 and they all at about 0900 hours were walking to their job and when at about 0915 hours reached at Ding Dong Hilal Factory Street, on motorcycle bearing

registration No.KDG-6448 two bangali boys came and stopped them, one shown them a long barrel pistol and said them to handover the mobiles and cash, otherwise they will shoot them. They snatched mobile phones from Ali Muhammad and Saeed and during such stage Saeed protested and Ali Muhammad tried to apprehend the decoit, then one dacoit bite on the left hand of Ali Muhammad and the other pistol handed dacoit started firing on them with intention to kill them, but they were saved in such firing. During such incident, two police mobiles while patrolling reached at the place of incident and the police party tried to stop the firing of dacoits but the dacoits started firing on the police party and the police also made aerial firing, then the culprits/dacoits while continuing firing at the police left their motorcycle and tried to escape from the place of incident. The police then made straight firing upon the culprits and both the culprits sustained bullet injuries on their legs and they got down. Police apprehended the accused persons. From the possession of one accused, police officer whose name has been known to me as Muhammad Ramzan, one long pistol, one bullet in the magazine of pistol and one round in the chamber were recovered, who disclosed his name as Maqbool S/o Sabir Bangali and from the possession of other accused person, snatched mobile phones were taken from his pocket. When asked about his name, he disclosed his name as Rafique S/o Rasheed Bangali and police officer asked about the licence of pistol from the accused Maqbool, who failed to produce the same. Police party after taking

into the possession of pistol and snatched mobile phones prepared memo, then sealed the recovered pistol and mobile phones and the memo was read over to him then Ali Muhammad signed as witness and then came at PS alongwith accused persons and other police officials. The complainant reported to lodge the FIR against the culprits for snatching their mobile phones and on protest firing on them and for biting Ali Muhammad and for firing on the police party.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has been falsely implicated in this case; that the name of applicant/accused was disclosed by the main accused arrested in FIR No.745/2018 for the offence under sections 392, 353, 324/34 PPC of PS KIA (East) Karachi while the remaining story has been maneuvered by the police; that it is a case of planting the alleged weapon with absolute dishonest intention; that the very arrest shown is in violation of section 23 of the Act, as there is nothing word to fulfill the provisions as contained in subsection (2) of Section 23 of the Act 2013; that there is no evidence to substantiate the prerequisite of section 24 of the Act 2013; that the applicant/accused is neither hardened nor desperate criminal; the alleged recovery has been foisted upon the applicant/accused; that all the witnesses are police official and no independent witness was cited as witness in the case which indicates that there is violation of section 103 Cr. P.C; that no specific role has been attributed to the applicant/accused and

there is general allegation against him, hence the case against the applicant/accused falls under further enquiry; that the applicant/accused was not arrested at the spot and he was shown arrested later on which also makes the case for further enquiry. He lastly prayed for bail.

4. Learned DPG for the State opposed to the grant of the bail application on the ground that the applicant/accused had succeeded to flee away during the encounter and was arrested later on by the police party having the same pistol used in the encounter for which the case being Crime No.746/2018 was registered; that empties secured from the place of incident was also found matched with pistol secured from possession of the applicant/accused, therefore, there is sufficient evidence against the applicant/accused besides disclosure of name of the present accused by co-accused; that the offences committed by the applicant/accused have created insecurity and panic in the public while attacking upon law enforcement agency and in defence firing made by him, present accused made his escape good from the scene on the motorcycle. He prayed that the material collected against the applicant/accused is sufficient which disentitles him for concession of bail at this stage.

5. We have heard the learned counsel for the applicant and learned DPG for the State and perused 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.745/2018 for the offence under sections 392, 353, 324/34 PPC of PS KIA (East), Karachi and the present case is off-shoot of the said main case and in our view the applicant/accused deserves to be released on bail on the ground of further inquiry. It is further added that the case in hand provided for punishment under section 23(1)(a) of Sindh Arms Act, 2013, has to be determined by the learned trial Court, as in such like cases, whether accused would be liable to the maximum punishment as provided for the offence or otherwise and consequently the instant bail application was allowed vide our short order dated 18.07.2018, whereby the applicant/accused was granted bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

7. These are the reasons of the said short order dated 18.07.2018.

8. Needless to mention that the observations made hereinabove are tentative in nature and would not prejudice the case of either party at trial.

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