

**IN THE HIGH COURT OF SINDH, KARACHI**

**Criminal Bail Application No.124 of 2018**

**PRESENT:**

**Mr. Justice Naimatullah Phulpoto**

**Mr. Justice Shamsuddin Abbasi**

Applicant: Ghulam Murtaza son of Ghulam Nabi Abbas through Mr. Shah Imroze Khan, advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General Sindh

Date of hearing: **20.02.2018**

**ORDER**

**SHAMSUDDIN ABBASI, J.--** Applicant/accused Ghulam Murtaza son of Ghulam Nabi Abbas seeks post arrest bail in F.I.R. No.172/2017 of P.S. CTD Sindh, Karachi for an offence under sections 353/34, PPC read with section 7 of the Anti-Terrorism Act, 1997.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 22.10.2017 police party of P.S. CTD Sindh, Karachi, headed by SIP Rana Muhammad Ashfaq was busy in patrolling duty. During patrolling, SIP received spy information about presence of accused, namely, Shah Nawaz son of Sabir Khan, involved in heinous crimes including target killing of police officials along with his accomplice Ghulam Murtaza son of Ghulam Nabi Abbas at a street behind Eva Government Girls School, Machhliwali Gali, "I" Area, Korangi No.5, Karachi. On receipt of such information, police party proceeded and reached at the pointed place at about 2150 hours. Police encircled both the culprits, who were standing at the corner of street and tried to apprehend them. It is alleged that accused scuffled with the police party and also tried to snatch the official weapons from the police party. During scuffle it is alleged that shirt of one of the members of the police party, namely, HC Danish Qadeer was torn. It is further alleged that due to commotion, a large number of persons of locality had gathered but both the culprits managed to escape from the scene. Thereafter, police returned to P.S. and lodged F.I.R. against applicant/accused vide Crime No.172/2017 under sections 353/34, PPC.

3. After registration of F.I.R., the police started investigation, recorded the statements of witnesses under Section 161, Cr.P.C. prepared mashirnama of place of occurrence and finally submitted challan against accused under section 512, Cr.P.C. adding Section 7 of Anti-Terrorism Act, 1997.

4. Police arrested the applicant/accused on 19.12.2017 and submitted subsequent report before the Court.

5. Applicant/accused moved bail application before the trial court, it was dismissed vide order dated 18.01.2018.

6. Learned counsel for the applicant/accused submits that the incident occurred during odd hours of night and police did not disclose the source of identification as such identity of accused was doubtful. He further submits that applicant/accused was empty handed while police party was comprising of eight police officials, who were duly armed with official weapons and highly trained, inspite of the fact the shirt of one of the police officials was torned and the culprits managed to escape from the scene. Lastly argued that prosecution case was doubtful and one of the further inquiry.

7. On the other hand, learned D.P.G. submits that accused persons assaulted on police party and used criminal force to deter the police party from performing their official duties. He further submitted that the accused persons scuffled with the police party in which shirt of HC Danish Qadeer was torn. He further submitted that a large number of people had witnessed the incident and the applicant/accused has committed alleged offence. Learned D.P.G. opposed the bail application.

8. We have heard learned counsel for the applicant/accused as well as D.P.G. It transpires that the applicant/accused was empty handed at the place of incident. Ingredients of offences, with which the accused is charged are yet to be determined at trial after recording the evidence. It is a matter of record that the police party was comprising of eight police personnel, duly armed with weapons, despite that they failed to arrest empty handed accused at the time of incident which

prima facie creates doubt in the prosecution case. It is settled principle of law that benefit of doubt if any can be extended to the applicant/accused at bail stage. Reliance is placed on the case of Syed AMANULLAH SHAH versus The STATE (PLD 1996 Supreme Court 241) in which Hon'ble Supreme Court has observed as under:-

***“To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. 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”.***

9. For the above stated reasons, case against applicant/accused requires further inquiry. Concession of bail was extended to applicant/accused Ghulam Murtaza son of Ghulam Nabi by short order dated 20.02.2018 and these are the reasons thereof.

10. Needless to mention here that the observations made hereinabove are tentative in nature and the trial Court shall not be influenced by the same while deciding the case(s) of the applicants/accused on merits.

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