

# IN THE HIGH COURT OF SINDH AT KARACHI

**Cr. Bail Application No.34 of 2019**

**Present:-**

**Mr. Justice Aftab Ahmad Gorar**

**Mr. Justice Amjad Ali Sahito**

Applicant : Shahbaz @ Shani s/o Muhammad Ali  
through Ms. Kiran Jehan, Advocate.

State : through Mr. Faheem Hussain,  
Assistant Prosecutor General Sindh.

Date of Hearing : 15.01.2019

Date of decision : 15.01.2019

## **ORDER**

**AMJAD ALI SAHITO, J :-** Through this instant bail application, the applicant/accused Shahbaz @ Shani seeks post-arrest bail in Crime No.147/2016 registered at Police Station Awami Colony, Karachi for offence under Sections 353/324/186/34 PPC, after his bail plea has been declined by the learned IInd Anti-Terrorism Court & Additional Sessions Judge, Karachi East vide order dated 20.02.2018.

2. Precisely, the relevant facts leading to disposal of the instant bail application are that the complainant/SIP Muhammad Ramzan lodged FIR at P.S Awami Colony, stating therein that, he along with subordinates PC Zahir Shah 15963, PC Nadeem s/o Rafique, PC Naseer 9317 and PC Muhammad Hafeez 13381 were on patrolling duty in the area. During the course of patrolling at about 23:00 hours when they reached at link road near Telephone Exchange Sector 26, KIA Karachi, they saw two suspicious persons were going on bike bearing Registration No. KB-2401 as such police party gave the signal to stop them, on which they started a fire with ammunition

upon police party with the intention to commit their murder. In retaliation, the police party also started firing, resultantly, one of the accused sustained firearm injury on his leg and fallen down along with motorcycle while other accused under the cover of firing made escaped good. Police apprehended injured/ accused who, on inquiry, disclosed his name as Shahbaz @ Shani son of Muhammad Ali. Due to unavailability of private witnesses/mashir, complainant/SIP in presence of police official conducted a body search of injured accused and recovered one 30 bore pistol along with loaded magazine containing 05 alive rounds from his hand. On demand, he failed to produce valid license of the recovered pistol.

3. The applicant/accused was arrested and subsequently remanded in the judicial custody, the final report was submitted before the trial Court. The applicant/accused had moved bail application before the learned trial Court i.e. IInd Special Sessions Judge (A.T.C.) East at Karachi, which was dismissed vide order dated 20.02.2018, hence he has impugned the order of the learned IInd Anti-Terrorism Court & Additional Sessions Judge, Karachi East dated 20.02.2018 before this Court.

4. Learned counsel for the applicant/accused, *inter-alia*, contended that the applicant/accused is innocent and has falsely been implicated in this case by the police; that the allegations against the applicant/accused are general and no specific role has been attributed to him; that section 7 ATA is not applicable in the present case; that police has shown fake encounter, wherein none from complainant party sustained any firearm injury during encounter; that the place of incident is thickly populated area but complainant failed to associate not a single person to act as mashir

of recovery and arrest; that section 353 is bailable offence whereas no one is injured from police party nor any vehicle was damaged by the alleged firing made by the accused persons, therefore, section 324 PPC is not applicable. Lastly, he prayed for the concession of bail.

5. On the other hand, learned A.P.G. for the State has opposed for grant of bail. He further contended that the applicant/accused was arrested on the spot red-handed while applicant/accused sustained firearm injury on his leg during police encounter, and police recovered crime weapon from his possession, hence, he is not entitled to the concession of bail, however he, candidly submitted that previously the applicant/accused was not involved in any other criminal case.

5. We have heard the learned counsel for the applicant/accused, learned APG for the state and examined the material available on record. Undisputedly, the speedy and fast trial is the fundamental right of every accused person, the policy of criminal law is to bring accused person to justice as speedy as possible so that if he is found guilty he may be punished and if he is found innocent, he may be acquitted and discharged.

6. From the perusal of the available record, it is evident that the applicant/accused was arrested on 26.03.2016 and since then he is in jail but his trial has not been concluded. Past record shows that neither the applicant/accused was involved in any case nor was convicted for any offence. Even otherwise, at the most, the alleged incident is a case of ineffective firing as from the police party none amongst the members of the police party sustained any injury in the firing alleged against the applicant/accused, hence, the ingredients of

section 324 PPC are missing. Challan has been submitted and the applicant/accused is no more required for the further investigation to the police. The applicant/accused is in jail for the last two years without any tangible progress in the case before the trial court and all the witnesses are police officials, therefore, there is no apprehension of tampering of prosecution evidence.

7. Considering the above circumstances, we are of the view that the applicant/accused has succeeded to make out a case of grant of post-arrest bail and consequently the instant bail application is allowed. The applicant/accused is granted bail subject to his furnishing solvent surety in the sum of Rs. 100,000 (one lac only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

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

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