

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Crl. Bail Application No.715 of 2018
Crl. Bail Application No.716 of 2018
Crl. Bail Application No.717 of 2018

Applicant Khawaja Muhammad Yahya son of
Khawaja Muhammad Ikram.

Respondent The State

Applicant Through Syed Khurram Kamal
Advocate.

Respondent Through Mr. Ali Hyder Saleem
DPG.

Date of hearing 03.09.2018
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ORDER

SHAMSUDDIN ABBASI, J:- Applicant Khawaja Muhammad Yahya seeks bail in FIR No.258 of 2017 under Sections 385, 386 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Gulberg, Karachi, FIR No.78 of 2017 under Section 353, 324 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Surjani Town, Karachi and FIR No.80 of 2017 under Section 23(1)(a) of Sindh Arms Act, 2013 registered at Police Station Aziz Bhatti, Karachi. He is facing trial in the Court of learned Anti-Terrorism Court No.XIII, Karachi, in Special Cases No.1892, 1893 and 1894 of 2017 and by an order dated 02.05.2018 the bail pleas of applicant were dismissed.

2. Since all three bail applications are offshoots of one incident, therefore, we deem it appropriate to decide the same together.

3 Facts relevant to these bail applications are that on 22.09.2017 complainant Mansoor Islam Siddiqui lodged an FIR at

Police Station Gulberg, Karachi, stating therein that Aleeza is the daughter of his elder brother Riaz Lateef, who received phone calls on 18.09.2017, from Cell # 0332-2609334 and Cell No.0303-2770952 demanding Rs.25,000/- towards extortion money with a threat that in case of non-payment of amount, she or any member of her family would be killed. She informed the incident to her uncle Mansoor Islam Siddiqui, who lodged FIR. The investigation was entrusted firstly to Inspector Javed Hussain and then to Inspector Habib Ali of P.S. AVCC/CIA. On 25.09.2017 again call was made from Cell # 0311-3492438, wherein the caller directed to bring extortion money at Abdullah Morr towards Katcha Road, Kaneez Fatima Society, Karachi. A team was constituted to conduct raid and arrest the culprits. SIP Ghulam Asghar Abbasi went to the pointed place in civil dress alongwith an envelope containing Rs.25,000/- where two persons came on one motorcycle Honda-125 and received the envelope. Meanwhile, the police party encircled the culprits, who on seeing the police party started firing upon them with intention to kill. Police also returned the fires in self defence. During encounter one culprit received fire arm injury and fell down from the motorcycle, who was apprehended on the spot whereas the other one managed to escape from the scene. The injured culprit disclosed his name as Kamran son of Jamal Ahmed and also the name of his companion, who made his escape good, as Yahya. During personal search, police recovered one 30 bore pistol without number loaded with magazine containing one bullet and a bullet loaded in chamber, one mobile phone G-5 containing SIM # 0311-3492435, cash of Rs.300/-, envelope containing extortion money from injured accused, who succumbed to his injuries and died soon after the incident. Thereafter, on 02.10.2017 police received spy information that absconding accused Yahya is present at Treasury Office, near Major Aziz Bhatti Park, Karachi. On receipt of such information the police party, headed by Inspector Habib Ali, proceeded to the pointed place and arrested accused Yahya. On his personal search, police recovered one 30 bore pistol loaded with magazine containing five live bullets, one mobile phone Nokia 101 and cash of Rs.400/-. On demand, the accused failed to produce a license of the recovered pistol. Police arrested him on the spot under a mashirnama and then brought him at P.S. where he confessed the commission of crime.

4. After usual investigation, the police submitted challans before the Court of competent jurisdiction.

5. It is inter-alia, contended on behalf of applicant that police has not collected any evidence against the applicant to show his involvement in the commission of crime except the statement of co-accused, which is not admissible in the eyes of law. It is next submitted that neither any identification parade has been held before a Magistrate nor the applicant was produced before a Magistrate for recording his statement under Section 164, Cr.P.C. It is also submitted that at the most a case of recovery of unlicensed arm is constituted against the applicant, which too was recovered in presence of police mashirs and no independent person was associated to witness the recovery; that the FIR of the incident has been lodged on 22.09.2017 whereas the applicant has been shown arrested on 02.10.2017 and since then he is in custody. Lastly, he submitted that the case of the applicant requires further inquiry and pending trial of the cases, he may be enlarged on bail.

6. On the other hand, the learned DPG has opposed the bail pleas on the ground that 9 MM pistol recovered from the possession of applicant was sent to ballistic expert and report is positive. He, however, concedes that the applicant has been implicated on the statement of co-accused, who sustained fire arm injuries during police encounter and died soon after the incident. He further admitted that nothing incriminating has been recovered from the possession of applicant except a pistol and all recoveries i.e. mobile phone SIM, extortion money and crime weapon were made from co-accused.

7. Heard arguments of both the side and perused the entire material available before us.

8. Admittedly the applicant is not nominated in the FIR lodged by Mansoor Islam Siddiqui and the case of the prosecution hinges only on extra judicial confession of applicant and statement of co-accused Kamran, who sustained fire arm injuries during police encounter and died soon after the incident. Even otherwise statement

of an accused before police is not admissible in the eyes of law. It is also undisputed fact that no identification parade has been held before any Magistrate without furnishing any plausible explanation so much so the applicant has not been produced before a Magistrate for recording his statement under Section 164, Cr.P.C. Nothing incriminating has been recovered from the possession of applicant except an unlicensed weapon and the recoveries of mobile phone SIM, extortion money and crime weapon have been shown recovered from the possession of co-accused Kamran. It is also to be noted that the FIR has been lodged on 22.09.2017 and applicant has been shown arrested on 02.10.2017 so much so the challans have been submitted and the applicant is no more required for further investigation. In the mentioned circumstances, we are of the considered view that a case of further probe within the meaning of sub-section (2) of Section 497, Cr.P.C. is called for. The bail applications are, therefore, granted. The applicant shall be released on bail subject to his furnishing surety in the sum of Rs.200,000/- (Rupees two hundred thousand only) in each case and P.R. Bonds in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that the observations made herein above are of tentative assessment and the trial Court shall not be influenced by the same while deciding the case(s) of the applicant on merits.

JUDGE

JUDGE

Naeem