

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No. 473 of 2020

Applicant : Mukhtiar S/o Mushtaq,
Through Mr. Munir Ahmed Khan, Advocate.

Respondent : The State, through Mr. Syed Meeral Shah Bukhari
Additional P.G, Sindh.

Date of hearing: 08.04.2020
Date of order: 08.04.2020

ORDER

ABDUL MOBEEN LAKHO J:- Being aggrieved and dissatisfied by the impugned order dated 27.03.2020 passed by the VIII Assistant Sessions Judge, Karachi-Central in Bail Application No.434/2020 whereby the post-arrest bail of the present applicant was dismissed, the applicant/ accused has approached this Court seeking bail.

2. Briefly stated, the facts of the case are that in the FIR are that in reference of crime No.114/2020, under section 392/34 PPC, in which the arrested accused namely Mukhtiar S/o Mushtaq and from his possession one pistol 30 bore with loaded magazine, 03 round alive, which number rubbed, were recovered, license were demanded but he could not produce the same, therefore, the act of the accused person falls under section 23(i)A Sindh Arms Act, on returning back to the police station, the case has been registered, investigation of the case handed over to SIO of above P.S, and remaining copies of FIR will be distributed according to rules.

3. That the learned counsel for the applicant/accused contends that the accused is absolutely innocent and not a previous convict or hardened desperate or dangerous criminal, and has falsely been implicated in this case by the police with malafide intention for ulterior motives to harass, humiliate and disgrace him in the Society, although he has nothing to do with the alleged offence; that Additional Session Judge erred while deciding the requisite bail application on the ground that since the applicant is involved in four other cases for which he has mentioned case and crime numbers in his order, it is submitted by learned counsel that Applicant/accused has already been granted bail in all mentioned matters except the one now which is filed for being crime No.115/2020 for which the applicant is facing trail after enlarge on bail.

4. That inspite of fact, the place of incident is thickly Commercial area but no independent person is cited as a mushir of arrest and recovery and all the mashirs are police officials and sub-ordinates of arresting officer which is clear violation of section 103 Cr.P.C. According to him, case of the applicant require

further inquiry and covered under sub section 2 of section 497 Cr.P.C.; that the applicant/accused have no any concern with the case, as the applicant/accused arrested in other case, but due to malafide intention involved him in this case just to show their efficiency, while the co-accused lady has also been granted bail in main case; that the applicant/accused is the sole supporter of his family and due to the arrest of applicant/accused in this false case, the family members of the applicant/accused are starving with hunger and as such this bail application may be considered on humanitarian grounds; that applicant/accused is permanent resident of Karachi hence there is no possibility to abscond from the Hon'ble Court; that applicant/accused is behind the bars since his arrest, and bail should not be withheld with punishment, it is held by the Supreme Court of Pakistan; that applicant/accused is neither previous convict nor facing any trial before any Court of law except present one; that the applicant/accused will not temper with prosecution evidence if released on bail; that the applicant/accused is ready and willing to furnish surety.

5. On the other hand, learned Additional P.G has opposed this bail application on the ground that there is sufficient material available on record as such, he is not entitled for the concession of bail.

6. I have considered the arguments advanced by the learned counsel for the applicant/accused and learned Additional P.G as well as perused the material available on record. From perusal of record it appears that alleged place of incident is thickly populated area, yet no private person has been cited as mashir, which is clear violation of Section 103 and is fatal to the prosecution case and benefit of the same will resolve in favour of the applicant/accused. It is important to note that applicant/accused has already been granted bail in main case, hence he is entitled to be enlarged on bail in this connected recovery case. It is settled law that every accused is presumed to be blue eyed boy of law until and unless he is found to be guilty of charge after recording of evidence, and law cannot be stretched upon in favour of prosecution particularly at bail stage.

7. For what has been discussed above, I am of the considered view that learned counsel for the applicant/accused has made out the case of the applicant/accused for further inquiry within the meaning of sub-section (2) of section 497 Cr.PC. The final challan has been submitted and the applicant is behind the bars since his arrest and is no more required for further inquiry. As such no useful purpose shall be served by keeping him behind the bars for an indefinite period. Therefore, the applicant/accused is admitted to bail, subject to furnishing a solvent surety in the sum of Rs.1,00,000/- (Rupees One Lac Only) and PR Bond in the like amount for the entire satisfaction of Nazir of this Court.

8. Needless to mention here that the observations made herein above are tentative in nature and would not prejudice the case of either party before trial Court.

9. Above are the reasons of my short order dated 08.04.2020, whereby, the applicant/accused was admitted to bail.

JUDGE