

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1066 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

28.09.2020

Mr. Qaim Ali Memon, Advocate for the Applicant.
Mr. Faheem Hussain Panhwar, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Shabir Ahmed seeks his release on post arrest bail in Crime No.220/2020 of P.S Sharafi Goth, Karachi, under Section 23(i) A of Sindh Arms Act, 2013. The bail plea preferred by him before the first forum was declined by means of order dated 13.07.2020; hence, he has approached to this Court through this Application.

The crux of the prosecution as unfolded by complainant/ASI Ghulam Mustafa of P.S Sharafi Goth, are that on 28.06.2020 an arrested accused of main case crime No.219/2020 under Section 392 PPC, namely Shabir Ahmed son of Gul Muhammad was found in possession of a 30 bore pistol along with a magazine containing one live bullet bearing No.3317, silver coloured. Such act on the part of accused was treated as an offence under Section 23(i) A of Sindh Arms Act, 2013, therefore, instant case was registered against him on behalf of the State. Copy of the FIR was handed over to SIO for investigation while rest of the copies were sent to all concerned according to law.

Learned counsel for the applicant at the very outset, submits that instant case is offshoot of main Crime No.219/2020 of P.S Sharafi Goth, under Section 392 PPC, in which applicant has been acquitted of the charge by way of judgment dated 08.09.2020, handed down by Civil Judge/Judicial Magistrate-XI, Malir Karachi. In support of his contention, he places on record true copy of said judgment, which is hereby taken on record; copy whereof has been shown to learned D.P.G, Sindh. He, therefore, submits

that case against applicant, in view of his acquittal in main case, requires further inquiry. Learned counsel further adds that applicant is not a previous convict, hardened or dangerous criminal besides punishment provided by the law is not more than 10 years even it is yet to be determined by the trial Court whether applicant was found in possession of an unlicensed weapon which may warrant attraction of Section 23 and 24 of Sindh Arms Act, 2013; hence, in support of his contention, he places reliance upon cases of (i) *MUHAMMAD NABI Versus The STATE (2014 MLD 1783)*, (ii) *MUHAMMAD USMAN Versus The STATE (2018 YLR Note 263)*, (iii) *AYAZ ALI Versus THE STATE (PLD 2014 Sindh 282)* and (iv) *ABDUL REHMAN alias SAIN Versus The STATE (2016 YLR 32)*.

Learned D.P.G, Sindh appearing for the State, in view of above legal position as well as citations relied upon on behalf of the applicant, has very candidly extended his no objection; however, has referred case of *RIAZ HUSSAIN KALHORO versus THE STATE (2004 P.Cr.L.J 290)*.

I have heard learned counsel for the applicant as well as learned D.P.G, Sindh and scrutinized the record with their able assistance.

It is not disputed that applicant has been acquitted from the charge of main case and he is not a previous convict or hardened or dangerous criminal. Reference can also be made from the case of *DIN MUHAMMAD Versus The STATE (2017 YLR Note 54)*.

It is settled principle of law that when an individual/accused gets acquittal from the charge of main case then he should be acquitted from the charge of offshoot/connected case likewise if an accused is granted bail by the trial Court or superior Court(s) in main case then he deserves to be bailed out in connected/offshoot case. In case of *Manjhi Vs. The State (PLD 1996 Karachi 345)*, Honourable Bench of this Court while hearing appeal of an appellant in an offshoot case, had observed that when he has been acquitted from the charge of main case then he should be acquitted from the charge of offshoot case. The dicta laid down by this Court in case of *Manjhi (Supra)*, was maintained and followed by learned Bench of Lahore High Court in case of *Yasir Chaudhry vs. The State (2012 MLD 1315)*. It will be

conducive to reproduce relevant paragraph of the judgment which reads as under;_

“In the case reported as Manjhi v. The State (PLD 1996 Karachi 345) it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case. So, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A Cr. P.C. is accepted and the petitioner is acquitted from the charge in case F.I.R. No.17 of 2003 dated 12.1.2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur.”

Since applicant has been acquitted from the charge of main case, therefore, involvement of the applicant in this offshoot/connected crime is a question, which is yet to be determined by the trial Court after recording evidence of the prosecution witnesses. To keep him behind the bars, particularly when he has been acquitted from the charge of main case, will not serve any legal or technical purpose. Propriety of law demands that when applicant has been acquitted from the charge of main case then he deserves his release on bail in an offshoot/connected case.

As far as quantum of sentence is concerned, the legislature has left it upon discretion of the trial Court to decide whether after recording evidence of the prosecution witnesses, accused would be liable to maximum punishment as provided under Section 24 of the Act or otherwise. In case of AYAZ ALI (Supra), learned Bench of this Court while discussing and dealing with identical issue has held in para-10 of its judgment, as under;_

“10. As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under section 24 of the S.A.A., 2013, is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of case. The record is also silent as to whether the applicant is a

habitual or previous convict, hence all these facts makes the case against him as that of further inquiry."

Moreover, all the witnesses in this case are police officials; therefore, question of his absconding or tampering with prosecution evidence, does not arise and it is for the trial Court to adjudicate guilt of the accused. The case has been challaned and the applicant is no more required for the purpose of investigation or interrogation. It is a settled principle of law that bail cannot be withheld as punishment and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

The upshot of above discussion is that applicant has made out a good prima facie case for his release on bail within the meaning of subsection 2 to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed; applicant Shabir Ahmed son of Gul Muhammad, shall be released on bail subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A