

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.B.A.No.S- 1088 of 2013

DATE ORDER WITH SIGNATURE OF JUDGE

04.12.2013.

Mr. Zulfiqar Ali Abbasi, Advocate for applicant.
Syed Meeral Shah, D.P.G. for the State.

=

NAIMATULLAH PHULPOTO, J:- Applicant/accused Mazhar Ali Kalhoro seeks post arrest bail in Crime No.144/2013 registered at Police Station Seri, District Hyderabad U/s 324, 353, 392 PPC.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 15.10.2013 SIP/SHO Qadir Bux Behrani left Police Station alongwith his subordinate staff for patrolling in the area and during patrolling reached at Kathar road and started checking. At about 2030 hours one white coloured Van came from Hyderabad side and driver while seeing the police party, turned back and tried to drive away but vehicle stopped by police party. On the head light of vehicle, police saw driver and three persons sitting in Van. They tried to run away to sugarcane crop. The police party challenged accused, on which all the four accused made straight fires upon the police party with intention to commit their murder. Police party also made fires in defence and after five minutes two persons came out from the Sugarcane crop whereas remaining two made their escape good. On inquiry applicant/accused disclosed his name as Mazher Ali Kalhoro s/o Ali Gul Kalhoro and one revolver of 32-bore was secured from his possession in presence of mashirs with four live bullets and cash of Rs.50/- was also recovered from his side pocket. Accused had no license for the weapon carried by him. The accused and the case property were brought at Police Station where FIR u/s 392, 324, 353 was registered against the accused and

separate cases u/s 23-A Sindh Arms Act, 2013 were also registered against both the accused having been found in possession of unlicensed arms.

3. After usual investigation challan was submitted against the accused U/s 392, 324, 353 PPC.

4. Bail application was moved on behalf of the applicant/accused before the trial Court, the same was dismissed by learned Ist Additional Sessions Judge, Hyderabad vide orders dated 29.10.2013. Thereafter, applicant/accused approached this Court.

5. Mr. Zulfiqar Ali Abbasi, learned advocate for applicant/accused mainly contended that despite encounter with the sophisticated weapons, nobody had sustained injury. It is the case of ineffective firing. He has argued that ingredients of Section 324 and 392 PPC are yet to be determined at trial. Applicant/accused is no more required for investigation. There is no question of tampering with evidence as all the PWs are police officials. In support of his contentions, reliance has been placed on the case reported as Junaid and 2 others v. The State (2000 P.Cr.L.J 1510).

6. Syed Meeral Shah, learned D.P.G. appearing on behalf of the State argued that applicant/accused had fired upon the police party with intention to kill. The alleged offence falls within the prohibitory clause of Section 497 Cr.P.C. He has opposed the application.

7. I am inclined to grant bail to the applicant/accused for the reasons that prima facie, prosecution story is unbelievable. Despite encounter with sophisticated weapons no one has received injury in the incident. No private person has been made as a mashir in this case. Intention of the applicants/accused of firing upon the police party with intention to kill is yet to be determined at trial. In the case of Junaid and 2 others (Supra), it has been held as under:-

“Admittedly, it is a case of ineffective firing, which is also not attributed to any of the applicants. No private person has been picked up from such a heavily congested place like Shahi Bazar of city to give evidence as to commission of crime as is alleged. It is also not understandable that how the police officials identified the accused by name as soon as they came within their sight when they do not seem to be earlier know to the police. No empty of SMG rifle is said to have been found at

place of incident. All these facts make the case against the applicants of further inquiry.”

8. For the above stated reasons while relying upon the aforesaid authority, I hold that the case against the applicant/accused requires further inquiry as contemplated U/s 497 Cr.P.C. Therefore, concession of bail is extended to the applicant/accused subject to furnishing solvent surety in the sum of Rs.100,000/- (One lac) and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. Needless to say that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court at the time of deciding the case on merits.

10. These are the reasons of short order announced by me on 04.12.2013.

JUDGE

Tufail

