

**IN THE HIGH COURT OF SINDH,CIRCUIT COURT
HYDERABAD**

Present:

Mr. Justice Salahuddin Panhwar
Mr. Justice Zulfiqar Ahmad Khan

Cr. B.A. No.D- 07 of 2022

31.03.2022

Mr. Mehmood Alam Abbasi, advocate for the applicant
Ms. Rameshan Oad A.P.G

ORDER

SALAHUDDIN PANHWAR, J. Through instant bail application, applicant seeks post-arrest bail in crime No.105 of 2021, registered at Police Station Mirpur Sakro, under sections 23(1)(a) of Sindh Arms Act 2013, 4/5 Explosive Substances Act 1908 and 6/7 Anti-Terrorism Act 1997. Earlier bail plea raised on behalf of the applicant was declined vide order dated 18.12.2021, by learned Judge, Anti-Terrorism Court-I, Hyderabad.

2. The details of the incident find an elaborate mention in the bail application, therefore, the same are not be reproduced here, so as to avoid unnecessary repetition.

3. The learned counsel for the applicant contends that applicant has been falsely implicated in this case with malafide and ulterior motive due to enmity; that on 30.09.2021, applicant was taken away by the Sujawal police from Aero wooden shop, in this regard, the brother of applicant filed application U/S 491 Cr.P.C before concerned Court; that although this is a case of spy information, yet no independent person has been cited as mashir; the challan has been submitted and the applicant is no more required for investigation purpose, therefore he is entitled for grant of bail. In support of his contentions, the learned advocate for the applicant relied upon the case of **Muhammad Noman V The State and another** (2017 SCMR 560).

4. In contra, learned APG for the State vehemently opposed the grant of bail to applicant on the ground that applicant was arrested while he was going on a robbed Suzuki, FIR of which was registered at PS Mirpur Sakhro bearing Crime No.102/2021 and from his possession police recovered hand grenade and one unlicensed pistol; that the applicant was arrested at about 9:30 p.m., therefore non-availability/association of a private person at the crime scene could not lose the sight. She further argued that the applicant is habitual offender as he is also involved in crime No.102/2021, registered on 30.9.2021 at P.S Mirpur Sakro, therefore filing of application U/S 491 Cr.P.C by the brother of applicant on 05.10.2021, carries no weight, even otherwise the applicant (alleged detainee of that case) was not found confined at P.S during the raid conducted by the learned Judicial Magistrate on 05.10.2021; that no specific enmity has been alleged against police party for false implication of the applicant in this crime, therefore at this stage he is not entitled for grant of bail.

5. Heard and perused the record.

6. With regard to plea of the counsel for the applicant that no private person was associated to witness the arrest and recovery, record reflects that the applicant was arrested at night time while he was going on a Suzuki Pickup, which was robbed property of crime No.102/2021 of P.S Mirpur Sakro and from his possession one hand grenade and an unlicensed pistol were recovered by the police. Since the recovery was effected at road side, therefore, the provisions of section 103, Cr.P.C. are not attracted. Reliance is placed on the case reported as **State v. Muhammad Amin (1999 SCMR 1367)**. In any event, under Section 34 of the Sindh Arms Act, 2013 it is provided that the arrest and search under this Act shall be executed in line with the provisions of Cr.P.C except Section 103 Cr.P.C. however, proviso has been added that any police officer or the person present on the spot can be witness of search and recovery. It is thus clear that compliance of Section 103 Cr.P.C is not mandatory and the police officer can also be a witness of search and recovery including the person present on the spot. Needless to add that the members of the police force are competent witnesses in the eyes of

law and could be credited with veracity unless it could be demonstrated that they were false witnesses and had maliciously accused an innocent person of the commission of an offence for ulterior motives. No such reason was shown to hold that members of the Police party had any ulterior purpose in involving the applicant in such crime.

7. The next contention of learned counsel that applicant was taken away by the police on 30.9.2021, perusal of application U/S 491 Cr.P.C manifests that the same was filed on 05.10.2021 and during the raid conducted by Judicial Magistrate at P.S, the applicant (alleged detainee of that case) was not found confined there and as per present FIR, the applicant was arrested on 06.10.2021, while going on a robbed Suzuki and hand grenade and unlicensed pistol were also recovered from his possession. Applicant is also involved in an FIR bearing Crime No.102/2021, registered on 30.9.2021 at P.S Mirpur Sakro. Further, the CRO submitted by concerned SIP, shows that applicant is also involved in 37 cases, including heinous offences like dacoity, police encounter and theft etc. which shows his inclination towards being a desperate character. Mere non-conviction of the applicant in the past for any crime is no ground by itself to release him on bail. Reliance is placed on the case reported as **Afzaal Ahmed vs. The State (2003 SCMR 573)**. The crime story narrated in the FIR finds support from 161 Cr.P.C statements of P.Ws. Moreover, deeper appreciation of evidence is not permissible at bail stage and only tentative assessment is to be undertaken.

8. For the foregoing reasons, the applicant has failed to make out a case for grant of bail, consequently, the instant bail application is dismissed. The above observations, however, shall not shadow the trial, to be essentially settled on the strength of evidence alone. Learned trial court is directed to conclude the trial expeditiously.

JUDGE

JUDGE