

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.  
Mr. Justice Agha Faisal, J.

Cr. Bail Application No.654 of 2022

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Ahsan Ellahi -----Applicant

Versus

The State ----- Respondent

Mr. Muhammad Rafi, advocate for applicant.

Mr. Muntazir Mehdi, Addl. P.G..

**26.04.2022.**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Applicant was spotted committing robbery alongwith co-accused Shaban from people at traffic signal, Qazi chowk, Allah Wali round about PECHS Karachi on 18.03.2019 at 2235 hours and was called out by the police of P.S. Ferozabad, District East Karachi on patrol under supervision of Inspector Muhammad Qabil. That led to an encounter between them in which from firing of accused, PC Muhammad Tarique and one passerby namely Rab Nawaz received bullet injuries. Applicant was also injured in cross-firing and arrested at the spot. His accomplice namely Shaban however, made his escape good by riding on the motorcycle. From applicant, allegedly 06 mobile phone sets, 02 pistols, 03 valets and one fake police identity card were recovered.

2. Learned counsel for applicant submits that applicant was a passerby, was injured in the firing, has been falsely implicated in this case; the injured PC Muhammad Tarique did not reach within time but checked in the hospital at 5.30 pm, which contradicts prosecution story; there are contradictions in 161 CrPC statement of the eyewitnesses and their statement is ditto copy of each other; the trial has not proceeded since January, 2021 when 4<sup>th</sup> witness was examined; in the evidence of witnesses there are contradictions and in view of which applicant is entitled to bail; that not 06 but 03 mobile sets are shown to have been recovered from applicant. The applicant

was since arrested in injured condition, he needs to get out of jail for proper treatment. In order to support his case, learned counsel has relied upon 2017 YLR 1232, 2017 SCMR 538 and SBLR 2017 Sindh 1595.

3. On the other hand, learned Addl. P.G submits that applicant was arrested from the spot, from him robbed articles were recovered; four witnesses have been examined in the trial who have supported the case and which shows that trial is in progress. Lastly, prosecution, if directions are issued, is ready to conclude the trial within a short while.

4. We have considered submissions of the parties and perused the material available on record including case law relied upon at the bar which involve facts distinguishable from the ones in this case. Applicant allegedly was arrested from the spot in injured condition and from him robbed articles were recovered which include mobile phone sets, pistols and fake police identity card. In the incident, not only one constable Muhammad Tarique but a passerby Rab Nawaz was also injured and who subsequently died. This chain of events shows that this is not a usual case of encounter but there is prima facie evidence connecting applicant with the incident which happened in the manner as is alleged in the FIR. The ground of variation in the time, PC Muhammad Tarique approached the hospital for treatment is not helpful to the applicant at this stage, nor will it make the case against him to be of further inquiry. Recovery of incriminating articles is yet another piece of evidence which also seems to connect applicant with the case. The witnesses in 161 CrPC statement have supported the case to boot. The fact that trial Court has examined four witnesses shows that it has been making efforts for proceeding with the case and the trial is in progress. In these circumstances, suggestion of learned Addl. P.G for directions to the trial Court to conclude the case, appears to be attractive and in the interest of justice.

5. Accordingly, these bail applications are dismissed. However, trial Court is directed to take coercive measures to procure attendance of the witnesses and conclude the trial within a period of 03 months from today and submit such report to this Court through MIT-II. However, in any case, after such period, if trial is not concluded, the applicant would be at liberty to move a fresh bail

application before the trial Court, which, if filed, shall be decided on its own merits.

Needless to mention here that observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE

JUDGE

A.K