

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Bail Appln. No.S- 347 of 2022

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Mohammad Ali Ogahi

Vs.

The State

Applicant : Muhammad Ali Ogahi, Through Mr. Muhammad Afzal Jagirani, Advocate

State : Through Mr. Khaleel Ahmed Maitlo, Deputy Prosecutor General.

Date of hearing : 21.07.2022.

Date of Decision : 21.07.2022.

ORDER

Adnan-ul-Karim Memon, J:- Through these bail applications, applicant Mohammad Ali Ogahi has sought post-arrest bail in the case, emanating from F.I.R No.17 registered at Police Station, Gublo Kacho, under Sections 353,324,148,149 PPC and FIR No 18 of 2022 registered at Police Station, Gublo Kacho, under Sections 23 (i)(a) 25 SAA, after his plea for post-arrest bail, in both the cases, had been declined by the learned Sessions Judge, Kashmore at Kandhkot vide common Order dated 29.06.2022 with the reasoning that applicant was arrested on the spot, not only along with his weapon but also in injured condition, to cause loss to Police party.

2. The accusation against the applicant is that he along with his accomplices fired upon the Police party, to deter them from discharging their lawful duty. The police party also fired in their self-defense, and as a result, he was injured. Police arrested him along with an un-licensed 30 bore Pak Made T.T Pistol, such report of the incident was lodged at the above police station.

3. Mr. Muhammad Afzal Jagirani, learned Counsel for the applicant has mainly contended that the applicant is innocent and has been falsely implicated by the police and caused injury to him on his leg, thus they committed the offense and are liable to be dealt with under the law. He further submitted that police to save their skin from such incurable injury caused to the applicant managed the instant case; even otherwise nothing had happened as portrayed by the police; that all police officials played their active role in the commission of the crime, and are also interested witnesses. He has further argued that the prosecution story is a false fabricated and imaginary one. He lastly submitted that the applicant is entitled to the concession post-arrest bail in both cases managed by the police.

4. Mr. Khaleel Ahmed Maitlo learned Deputy Prosecutor General Sindh has submitted that the name of the applicant does transpire in F.I.R with a specific charge to have opened straight fires upon police party to commit their murder and thereby he has deterred them from discharging their lawful duty. He added that all the prosecution witnesses have fully supported the version of the complainant-police official, in their statements, thereby implicating the applicant to be the culprit of the alleged offenses. He further submitted that applicant was arrested along with an unlicensed weapon in injured condition, therefore, at this stage, it is established that the applicant has participated in the commission of the alleged offense. He further argued that the offenses for which the applicant is charged fall within the prohibitory clause of section 497 Cr. P.C; that no such any enmity or ill will for false implication of applicant has been pointed out; that Examination report of Forensic Science Laboratory in respect of Pistol, live bullets and empties recovered from the spot/applicant was/is positive. He prayed for the dismissal of the instant bail applications.

5. Tentative assessment of record shows, that those police officials were at a very close distance when the alleged incident took place; and, nobody from the police personnel received any injury; and only the applicant received an injury, though the alleged accused were armed with deadly weapons. A perusal of the final medical report reflects that the applicant sustained a firearm injury on the lower part of his leg from very close range. The prosecution has failed to collect criminal records, to show that the applicant was previously convicted and/or involved in any criminal case. The investigation has been completed and the applicant is no more required for further investigation, therefore, his further detention in jail for an indefinite period will not serve any useful purpose and the prosecution has failed to examine a single witness to substantiate the charge against the applicant.

6. The offense under section 353, P.P.C. is bailable and punishable extended to two years or with fine or with both does not fall within the prohibitory clause of section 497 (1) Cr.P.C. However to ascertain the offense for the attempt to murder the police officials as provided under section 324 P.P.C and bullet injury sustained by the applicant on the lower part of his leg, requires serious consideration and further probe as none of the police personnel sustained any injury though allegedly armed with deadly weapons and subsequent fled away from the crime scene, and it is for the learned trial Court to thresh out the truth after recording the evidence being adduced by the prosecution and defense during the trial. In such a circumstance, the applicant could not be deprived of the concession of post-arrest bail merely on the ground that he sustained the injury during the alleged encounter with the police where no police personnel sustained any injury being available at a close distance. Besides the recovery of the pistol was not made from the physical possession of the applicant, however, it is alleged that the pistol was lying near the applicant. Prima-facie the entire facts need

complete explanation by the prosecution before the trial court in evidence. It is a well-settled principle of law that deeper appreciation of evidence is not permissible at the stage of bail and the material is to be assessed attentively. From the tentative assessment of the material, available on record as has been discussed above the applicant has made out his case for further inquiry.

7. In view of the foregoing reasoning, these bail applications are allowed and the post-arrest bail is granted to the applicant in both the cases discussed supra, subject to his furnishing solvent surety in the sum of Rs. 100000/= (one lac only) in each case and the PR bond in the like amount to the satisfaction of the trial Court.

8. The observations made hereinabove are tentative only to decide the captioned bail applications, which shall not in any manner influence the learned Trial Court at the time of the final decision of the subject cases.

J U D G E

S.Ashfaq/ps