

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Cr. Bail Appln. No. S- 578 of 2020

Date	Order with Signature of Hon'ble Judge
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For hearing of bail application

02.11.2020

Mr. Shabbir Ali Bozdar Advocate for the Applicants/accused

Mr. Zulfiqar Ali Jatoi, Additional PG for the State

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ORDER

Aftab Ahmed Gorar, J:- Through instant Criminal Bail Application, the applicants/accused Akbar alias Roos S/o Mehar Tart and Jeewan S/o Gulsher, Tart, seek post-arrest bail in Crime No.99 of 2020 registered at Police Station, Ubauro, District Ghotki, for offences punishable under Sections 324, 353, 368, 147, 148, 149 PPC r/w Section 25 Sindh Arms Act-2013.

2. Precisely the facts of the prosecution case are that on 29.07.2020 at 0530 hours, complainant Inspector Imam Bux Lashari, SHO Police Station Ubauro lodged the FIR on behalf of the State, stating therein that on the night of incident, he along with his subordinates was on patrolling. On receiving a spy information that one Muhammad Saleem Solangi, who was abducted from the jurisdiction of police station Ubauro is being shifted to some other place by the culprits, therefore, he flashed such information to his high-ups, as such they held barricade on Hasoo Daho Link Road on the bridge of Feeder Wah, it was 0330 hours, they saw on the light of vehicles that seven persons having *kalashnikovs* and one empty handed person were coming in the path from northern side, as such they immediately alighted from their vehicles, whereas, DSP/SDPO Ubauro and Inspector Ghulam Hussain Dahri identified the culprits to be Jiwan Tart (present applicant), Qabool Shar, Ali Nawaz Kosh, Shahoo Kosh, Akber alias Roos Tart (present applicant), Shahoo alias Shah Muhammad Kosh and

Muhammad Nawaz Siyal, they were acquainted of being police and asked to surrender, abruptly they made direct fires from their *Kalashnikovs* with intention to commit *Qatl-e-Amd* of Police, whereas, the police party also retaliated in their defence, the encounter lasted for ten minutes and the police party narrowed the barrication and succeeded in capturing one of the culprits, whereas, the empty handed person rushed to the police and disclosed his identity as Muhammad Saleem Solangi, the alleged abductee, who was taken into custody. On enquiry, the apprehended accused disclosed his name as Jeewan Tart and he could not produce any valid permit for the *kalashnikov*, due to non-availability of private mashirs, HC Nawab Ali and PC Mir Hassan were appointed as mashirs, thereafter the accused along with the recovered *kalashnikov* was brought at police station, hence the FIR was registered.

3. The applicants/accused on having been refused post-arrest bail by the Court of learned Additional Sessions Judge / (MCTC) Ubauro vide separate orders dated 28.08.2020, have sought the same from this Court by filing the present bail application.

4. It is contended by learned counsel for the applicants/accused that applicants/accused being innocent have been involved in this case falsely by the police; that the general role of firing upon the police party has been attributed to the applicants/accused; that there was indiscriminate firing from both sides, but none from the police party has received a single injury nor any damage has been caused to the Government vehicles; that the applicant/accused namely Jeewan was picked up by the police from his house and then he was falsely implicated in this case by foisting the alleged *kalashnikov* upon him; that the applicant/accused Akber alias Roos was in wrongful confinement of police, where he was found in illegal confinement by the Civil Judge & Judicial Magistrate-I, Ubauro, who visited the police station under the orders of Sessions Judge, Ghotki, as one Muhammad Idrees Chachar had filed a Criminal Miscellaneous Application regarding illegal confinement of his brother namely Shah Nawaz in police custody;

that the alleged abductee namely Muhammad Saleem Solangi, was allegedly recovered from the accused neither he has been shown as witness / mashir or he was produced before the concerned Magistrate for recording his 164 Cr.P.C statement; that no recovery has been affected from the possession of present applicants/accused; that the case has been challaned and the applicants/accused are no more required for further inquiry, hence they are entitled for grant of bail.

5. Learned Additional PG for the State opposed for grant of bail to the applicants/accused by contending that they are involved in a heinous offence by deterring in the lawful duties of the police party; that one Muhammad Saleem, the alleged abductee was also recovered from the applicants/accused; that the applicant/accused Jeewan was arrested at the spot and Kalashnikov was recovered from his possession.

6. I have heard the learned counsel for the applicants/accused, learned Additional PG for the State and perused the record. As per FIR, the general role of firing is attributed to the applicants/accused in the commission of offence, whereas, the identity of the applicants/accused at the time of incident on the head lights of the police mobile is always termed as weak source of identification; that so far as the case of applicant/accused No.2 Jeewan is concerned, it is alleged that he was arrested at the spot along with Kalashnikov for which separate FIR has been lodged against him, as such the applicability of Section 324 PPC is yet to be determined at the trial after recording evidence. All the P.Ws are police officials, therefore, there is no likelihood of tampering of their evidence. The case has been challaned and the applicants/accused are no more required for further investigation. It is settled principle of law that accused cannot be kept behind the bars for an indefinite period. In these circumstances, the learned counsel for the applicants/accused has rightly contended that the applicants/accused are entitled to grant of bail on point of further enquiry, as envisaged under Section (2) of Section 497 Cr.P.C.

7. In view of above and by short order dated 02.11.2020, the applicants/accused were admitted to post-arrest bail subject to their furnishing surety in sum of **Rs.100000/- (One lac) each** and PR bond in the like amount to the satisfaction of learned trial Court. These are the reasons for the same.

8. The observations made herein above are tentative in nature and will prejudice the case of either party at trial.

Judge

ARBROHI