

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No.521 of 2018

[Nisar Ahmed v. The State]

Present:

Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 05.06.2018
Date of Order : 05.06.2018
Applicant : Through Mr. Moazzam Hussain
Khan, Advocate
State : Through Mr. Zahoor Shah, DPG

ORDER

Zulfiqar Ahmad Khan, J:- This order will dispose of the instant criminal bail application filed by Nisar Ahmed S/o Muhammad Idrees under Section 497 Cr.P.C.

2. Succinctly, facts of the prosecution case are that Complainant Muhammad Sarwar lodged an FIR alleging that on 08.11.2017 in the evening when he was coming back to home, he found large number of people gathered outside his house, who were maltreating a person. On inquiry, he was informed that at 06:00 p.m. one person being armed jumped inside his house from roof for committing robbery, but on the commotions of the female folks, neighbours came there and apprehended him. Later on, Police came at the spot and the Applicant/accused disclosed his name as Nisar Ahmed, while other absconding accused was named by him as Ali Raza. One 30 bore pistol alongwith 3 live bullets were also recovered from the possession of the Applicant/accused. Since he was injured he was taken to the hospital for treatment.

3. Learned counsel for the Applicant has submitted that the accused is an innocent person who lives in the same locality; that no previous criminal record, not to say any previous conviction exists and he has already been granted bail in the offence under

Sindh Arms Act, 2013; that while it is alleged that the offence took place and the Muhallah people, arrested the Accused, however, no Muhallah people have been joined as witnesses. He submits that when he was caught by Muhallah people allegedly a pistol of 30 bore was found in his possession, however, there is no evidence that the said pistol was recovered from his possession, as this fact does not find any mention in the FIR as to how the said weapon was recovered. It rather is stated that Muhallah people took possession of the weapon and handed it over to the Police. It is pertinent to note that not a single bullet was fired; while it is alleged that he jumped for dacoity and tried to take away possession of the valuables from the ladies of the house, however, there is no evidence that any valuable(s) was recovered from his possession by the mob or the Police. On the basis of these infirmities, counsel for the Applicant submits that these contradictions and infirmities make the prosecution story a case of further inquiry and in particular when the alleged offence does not fall within the prohibitory clause, he be enlarged on bail as he is innocent and sole bread earner of his family.

4. Learned DPG challenges the assertions of the counsel, read out the 161 Cr.P.C statements of the Complainant as well as Afzal Ahmed and Mst. Noreen Afzal, which are mirroring each other.

5. Heard the counsel, perused the record.

6. To the extent that someone jumps into a house, allegedly with a pistol but does not fire when caught by folks gathered there gives no plausible explanation or satisfies a prudent mind as to the question whether the person was actually armed or not. Also to keep in mind is the discrepancy of the weapon as there are contradictory statements of the PWs in this regard, all that comes

forward is that neither any shot was fired, nor any valuables were snatched or recovered from the accused, who was maltreated by people and sent up to Police. In the given circumstances and without touching merits of the case I am forced to reach an irresistible conclusion that the prosecution's case clearly becomes one of further inquiry in such circumstances as I see a painfully remote path of connecting the Applicant with the offences he is charged with. Keeping him incarcerated for an indefinite period in this clueless escapade will bring no joy to either side. I therefore allow this bail application and order release of the Applicant Nisar Ahmed S/o Muhammad Idrees on the bail subject to him furnishing surety in the sum of Rs.10,000/- (Rupees Ten Thousand) and P.R bond in the like amount to the satisfaction of the trial Court.

7. It would be relevant to mention that the observations made hereinabove are tentative in nature and the trial Court should proceed in the matter strictly on merit without being influenced by these observations.

JUDGE