

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

Cr. Bail. Appln. No.S-870 of 2011

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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13-04-2012

Mr. Wali Muhammad Jamari, Advocate for Applicants.

Syed Meeral Shah Deputy Prosecutor General Sindh

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O R D E R

**AQEEL AHMED ABBASI, J:** The Applicants being aggrieved and dissatisfied with the order dated 22.11.2011 passed by learned IInd Additional Sessions Judge, Hyderabad in Criminal Bail Application No. 3637/11 in Crime No. 103/2011 registered U/s 324, 353 PPC at P.S Chamber, ,whereby the bail application of the Applicants was dismissed have filed this bail application.

Brief facts as stated in the F.I.R. are as follows:-

“It is to complain on behalf of the state that I ma posted Sub-Inspector at Police Station Chamber. Today, dated 30.10.2011. I alongwith staff each ASI Gulzar Ali Leghari, PC/331 Qurban Ali, PC/238 Khalid Hussain, Pc/195 Abdul Jabbar, DPC/424 Muhammad Hashim left Police Station vide entry NO.07 at 1635 hours in official vehicle No.SP-7312 for patrolling in the AREA. During patrolling, from Chamber Road, Karachi Hotel, Saand Road, Mureed Mori and from Chakar Shakh Link Road, when reached near Sakhi Mori, saw two motorcycles, two persons boarded on one motorcycle, while on other motorcycle three persons boarded were coming, as they saw the police, they tried to return back the motorcycle. We reached near to them, alighted from vehicle alongwith staff and gave them hakals and said for stopping and at 1800 hours, all five accused persons alighted from motorcycles, took out weapons and made straight firing upon police party. We also made firing in our defence by taking positions. After some time, the accused persons stopped firing and we also stopped firing and said accused for surrendering weapons and four persons came out, thrown their weapons, raised their hands and said that they are ready for surrender, while 5<sup>th</sup> person made his escape good by taking advantage of darkness and jungle. As we took the accused in custody and inquired from them their names etc, who disclosed names each

1. Munawar Ali alias Muneer s/o Muhammad Soomar Manganhar, R/o near Civil Hospital, Tando Allahyar and took in custody one repeater of black colour with plastic body lying in front of him, number on its barrel erased, bush master etc. written on it, 12 bore, in working condition, which was unloaded and found 12 bore red cartridge of L.E company. His body search was conducted and 2 live while cartridges of 12 bore recovered from his side pocket of shirt, 2. Irfan s/o Muhammad Haroon Kunbhar, R/o Mithan Shah Paro and took in custody one TT pistol of 30 bore alongwith magazine lying in front of him and on checking found "CAL3.0 Made in China" written on its body, without number, which was unloaded and found its magazine empty and conducted his personal search and recovered 3 live bullets of 30 bore from right side pocket of his shirt. 3. Aalam s/o Gul Muhammad Leghari, R/o Ghulam Hussain Laghari and took in custody one TT pistol of 30 bore alongwith magazine lying in front of him, number erased, in working condition, which was unloaded and found its magazine empty and recovered nothing from his personal search. 4 Ashraf s/o Muhammad Bux Leghari, r/O Ghulam Hussain Leghari and took in custody pistol of 30 bore with steel body lying in front of him and found it Pakistan Automatic written on it in English, without number, which was unloaded and found two bullets of 30 bore in its magazine and one bullet of 30 bore in its chamber, which was unloaded. We inquired from them above escaped accused that he was Waseem Abbasi. All weapons wee taken into police custody and inquired about license of weapons. They disclosed that they are unlicensed. We found the offence U/s 353, 324 PPC and Section 13-D Arms Ordinance, arrested them and sealed recovered weapons and bullets from them separately. As all four above named accused are nominated accused of crime No. 101 of 2011 U/s 395 PPC, 17(3) Offence against Property (Enforcement of Hadd) Ordinance, hence they were also arrested in that case. We checked motorcycles and found one motorcycle CD-70, black colour, Model 2011, AFR, Engine No.2954126, Chassis No.801467, which is robbed property of Crime No. 101 of 2011 U/s 17(3) Offence against Property (Enforcement of Hudood) Ordinance, 1979, 395 PPC, which was taken into police custody, while other motorcycle is Super Star, Reg. No.Nil, Engine No.458747, Chassis No.MAF-513653, red colour, model 2010 and on failing of accused to produce its documents, the same was taken into custody U/s 550 Cr.P.C. Weapons recovered from accused and both motorcycles were taken into police custody and such mashirnama of arrest and recovery was prepared on torch light and due to non-availability of public mashirs, the signatures of ASI Gulzar Ali and PC/631 Qurban Ali were obtained on it. SHO

also reached at place of incident on receiving information on phone, with whom, narrated above facts and SHO after giving us necessary directions left for recovery of detainee in application No.S-451 of 2011 on the order of Honourable High Court of Sindh, Hyderabad. We alongwith staff brought the accused and recovered property brought at Police Station in police custody. As the above mentioned arrested accused and escaped accused Waseem Abbasi by hindering in our lawful duty have made straight firing upon us with the intention to kill, therefore, on behalf of State, this case is registered. Separate cases U/S 13-D Arms Ordinance will be registered against all the arrested accused on recovery of unlicensed weapons. I have fired 23 bullets with my official SMG rifle, while remaining staff will disclose detail of fired bullets themselves.”

It is contended by the learned counsel for the Applicants that the Applicants are innocent and have been falsely implicated in the instant crime. Per learned Counsel, the case as made out from the F.I.R. appears to be of ineffective aerial firing whereas no injury has been caused to any of the police party nor any scratch was caused on the police vehicle. Per learned Counsel, all the mashirs are police officials whereas no independent mashir has been associated to witness the recovery or arrest of the Applicants. Learned Counsel states that the Applicants are behind the bars since their arrest whereas the matter is not proceeding and even charge has not yet been framed. He further states that the alleged recovery has been foisted upon the Applicants and the matter requires further inquiry therefore, the Applicants are entitled to grant of bail. In support of his contentions, learned Counsel has placed reliance on the following cases:-

1. 2007 P.Cr.L.J 895 (Badal Vs. The State)
2. 2001 P.Cr. L.J 1731 (Illahi Bux Vs. The State).

On the other hand learned Deputy Prosecutor General Sindh though opposed the grant of bail however could not controvert the submissions made by the Counsel for the Applicant and ratio of the case law relied upon by the Counsel for the Applicant.

Heard learned Counsel for the Applicants as well as learned Deputy Prosecutor General Sindh and perused the record.

On tentative assessment of the record, it appears to be a case of ineffective aerial firing whereas no one from the police party received any injury nor any scratch has been caused to the police vehicle. No independent witness has been cited either as mashir of recovery or of the alleged incident whereas the Applicants are behind the bars since their arrest and the matter has not yet proceeded. No incriminating material has been produced by the prosecution so far which may directly implicate the Applicants with the instant crime, except the alleged recovery of weapons, which fact under the circumstances is not free from doubt. I am of the view that the Applicants have made out a case for grant of bail.

Accordingly, the Applicants are granted bail subject to their furnishing solvent surety in the sum of Rs.50,000/- each and P.R Bond in the like amount to the satisfaction of learned Trial Court.

Bail application stands allowed in the above terms.

**JUDGE**

A.H.

