

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT, HYDERABAD
Criminal Bail. Appl. No.D-14/2010

Order with signature of Judge

28.09.2010

Mr. Shamsuddin Khushik Advocate for Applicant.
Syed Meeral Shah Deputy Prosecutor General Sindh

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Ahmed Ali M. Shaikh J. Through this application, applicant Daim seeks post arrest bail in crime No.119/2008 of P.S. Shahdadpur District Sanghar registered u/s 365-A P.P.C., r/w sections 6,7 A.T.A Act, 1997.

2. The applicant/accused approached the trial court but his bail plea was turned down S.; vide order dated 17.04.2010.

3. Briefly stated facts of prosecution case are that on 20.11.2008 at 2310 hours, one Atta Muhammad s/o Mir Muhammad Dero lodged report stating therein that on 19.08.2008, he alongwith his brother Nabi Bux, cousin Muhammad Budhal Faqir, Muhammad Aslam Dero and Din Muhammad Dero came to Shahdadpur in a car and after finishing their work, they were returning to their village, at about 2345 hours when they reached at Banbhro Stop at Shahdadpur Shahpur Chakar road, it was blocked by a Datsun, due to its bad condition, they reduced the speed of their car; suddenly six armed persons with muffled faces emerged from cotton field. Out of them, four were armed with Kilashankoves while two had guns. On gun point they stopped their car and forcibly alighted Budhal Faqir and Nabi Bux from the car and bundled them in a Datsun which was without number plate. Four culprits boarded in the Datsun while two armed culprits occupied their car and proceeded towards Shahpur Chakar. After covering some distance, they released them while kidnapped his brother Nabi Bux and cousin Budhal Faqir in a Datsun and went to Shahpur Chakar after issuing threats to the complainant party. The complainant party was directed to arrange for ransom. The Complainant

informed their Nek Mard and tried to search out the culprits on their own accord but in vain. Later on the complainant registered the case against six unknown culprits.


4. It is inter alia contended by the learned counsel for the applicant that the applicant is innocent and has falsely been implicated in the case by the police with malafide intention. Per learned counsel on 09.09.2008 Chibhar @ Moharram, brother of the applicant filed Human Rights Petition No.120/2008 before Director Human Rights/District & Sessions Judge Sanghar alleging therein that on 21.08.2008 at about 0500 hours, DSP Shahdadpur, SHO Shahdadpur alongwith their subordinate staff raided their village and arrested Petitioner and others. The learned Sessions Judge called report from concerned SHO, who denied that the petitioner is in their custody. The above said application was disposed of vide order dated 18.09.2008. In support of his contention, learned counsel for the applicant has placed on record, certified true copy of the order dated 18.09.2008, passed in aforesaid petition. Per learned counsel, it is very strange that on one hand on 18.09.2008, SHO P.S. Shahdadpur stated before the Sessions Judge Sanghar that the applicant was neither arrested by them nor he was in their custody but on the other hand on 21.09.2008, the said SHO has shown arrest of the petitioner during encounter, allegedly took place between the dacoits and police party and recovered the abductees. Not only this but a Kilashankov has also been foisted upon the applicant. Per learned counsel, applicant was already in illegal custody of the SHO but in order to show his so called efficiency, present applicant has been implicated in this case as well as he is shown as one of the member of the dacoits, who participated in the encounter with the police. Per learned counsel, the applicant is innocent and he is behind the bars since three years. It is urged with vehemence that both abductees have filed their respective affidavits, exonerating the present applicant/accused from the commission of the offence.


5. Conversely, Syed Meeral Shah Deputy Prosecutor General Sindh for the State opposed the bail plea of the applicant but did not dispute the contents of the affidavits of abductees namely Nabi Bux and Budhal Fakir, whereby they have exonerated the applicant from the commission of crime.

6. Heard learned counsel for the parties and perused the record, particularly affidavits of the abductees Nabi Bux and Budhal Faqir, who also appeared in court on 02.09.2010 and affirmed the contents of their respective affidavits. On query, they categorically stated that neither present applicant has any concern with their abduction nor he was arrested by the police at the time of encounter nor any weapon was recovered from him. They further asserted that neither applicant is involved in their abduction nor he is one of the culprits, who abducted them. Admittedly, name of the present applicant does not appear in the F.I.R. nor his features and description are mentioned. Both the abductees namely Nabi Bux and Budhal Faqir appeared in the court and supported the averments made by them in their affidavits to the effect that the applicant was not amongst the culprits, who abducted them. They further contended that neither applicant was arrested by the police from the place of encounter nor any weapon was recovered from him.

8. In the light of the affidavits filed by the abductees, we are of the considered view that the case of the applicant requires further inquiry as there are no reasonable grounds to believe that the applicant is involved in the offence punishable with death, imprisonment for life or even 10 years. Moreover, the I.O. present in court on query, disclosed that except these three cases, applicant is not required in any other case and there is no criminal record of the applicant in entire District Sanghar.

9. For the foregoing reasons and dictum laid down by their lordships in case of Muhammad Nawaz @ Naja Vs. The State reported in 1991 SCMR 111 and Allah Bux Vs. Nazar Hussain and others, 1979 SCMR 137, the applicant was admitted on bail subject to furnishing surety in the sum of Rs.500,000/- and P.R bond in the like amount to the satisfaction of the trial court vide our short order dated 24.09.2010.


JUDGE


JUDGE 20.9.2010