

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Crl. Bail Application No. D- 22/2023.

Date of hearing	Order with signature of Judge
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For Hearing of Bail Application.

1. For orders on office objection at Flag 'A'.
2. For hearing of bail application.

Present:

Mr. Naimatullah Phulpoto, J

Mr. Amjad Ali Bohio, J

ORDER.

18.07.2023.

Mr. Qurban Ali Malano, Advocate for Applicant.

Mr. Zulifqar Ali Jatoi, Additional Prosecutor General.

NAIMATULLAH PHULPOTO J., Through this order, I intend to dispose of post arrest bail application filed on behalf of applicant/accused Asadullah alias Lal son of Meer Muhammad bycaste Dayo in crime No. 02/2023, for offences under sections 4/5 Explosive Substances Act 1908, 7 Anti-Terrorism Act, 1997 and 23(1) (A) of Sindh Arms Act, 2013. Prior to this, applicant/accused applied for post arrest bail before learned Judge, Anti-Terrorism Court Khairpur along with co-accused Muhammad Ibraheem and Rashid, co-accused were extended concession of bail vide order dated 22.02.2023, however, concession of bail was refused to applicant/accused. Hence, he has approached this Court for post arrest bail.

2. Brief facts leading to file this bail application are that on 18.01.2023 at 1300 hours applicant Asadullah alias Lal was arrested by CTD police on link road leading to Visrio Wahan and from his possession one unlicensed 30 bore pistol and three detonators were recovered. Co-accused ran away from spot. Mashirnama of arrest and recovery was prepared. Applicant and case property were brought at Police Station where FIR No. 02/2023 was lodged at CTD police Sukkur by SIP Mumtaz Hussain Mahar on behalf of state for offences under sections 4/5 Explosive Substances Act, 1908, 7 Anti-Terrorism Act, 1997 and 23(1)(A) of Sindh Arms Act, 2013.

3. Mr. Qurban Ali Malano, learned advocate for applicant/accused Asadullah alias Lal contended that unlicensed pistol and detonators have been foisted by CTD police upon applicant. It is further argued that applicant was missing since 16.01.2023 and his father namely Meer Muhammad Dayo had submitted such application in the office of D.I.G Police Sukkur on 16.01.2023 and this case was registered against applicant on 18.01.2023. Mr. Malano argued that co-accused Muhammad Ibraheem and Rashid in the same case have already been granted bail by the trial Court, investigation is complete and applicant/accused is no more required for further investigation. Lastly, submitted that there is reasonable doubt with regard to participation of applicant/accused in the crime and applicant/accused is entitled to the benefit of doubt at bail stage. He has relied upon the case of Syed Amanullah Shah v. The State and other (PLD 1996 SC 241).

4. Mr. Zulifqar Ali Jatoi, Additional Prosecutor General argued that case of co-accused to whom concession of bail has been extended by trial Court was distinguishable to the case of applicant/accused. It is further submitted by Additional P.G that detonators and unlicensed pistol were recovered from the possession of applicant and he has committed the alleged offence. Learned Additional P.G opposed the bail application.

5. We have carefully heard learned advocate for applicant/accused and learned Additional P.G for State and perused the relevant record.

6. We are inclined to grant bail to applicant/accused for the reasons that Investigating Officer had failed to interrogate the applicant with what intention he was carrying pistol and detonators at the time of arrest. Learned advocate for applicant has placed on record copy of an application submitted by the father of the applicant in the office of D.I.G Police Sukkur on 16.01.2023 regarding disappearance of his son (applicant) since Friday and his whereabouts were not known. Investigating Officer had also failed to ascertain the facts mentioned by the father of applicant in the application submitted in the office of D.I.G Police Sukkur. Applicant is no more required for investigation. Whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge,

the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in Jail, during the trial. Wisdom in this regard has been sought from the case of Syed Amanullah Shah v. The State and other (PLD 1996 SC 241) wherein it is held as follows :

“.....So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused.”

7. Prima facie, there are no reasonable grounds for believing that applicant/accused has committed the alleged offence but there are sufficient grounds for further inquiry into his guilt. Applicant/accused is admitted to bail provided he furnishes surety in the sum of Rs. 100,000/- (one lac) and PR bond in the like amount to the satisfaction of trial Court.

8. Needless to mention that observations made hereinabove are tentative in nature, trial Court shall not be influenced from such observations. Trial Court shall decide the case on merits in accordance with law.

9. The aforesaid bail application stands disposed of in the above terms.

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