

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No. 1476 of 2023
Cr. Bail Application No.1477 of 2023
Cr. Bail Application No.1478 of 2023

Date	Order with signature of Judge
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31.07.2023

Ms. Arfa Raham Ali Rind, Advocate for the applicant.

Mr. Hussain Bux Baloch, APG.

ASI Umer Hayat, P.S. Gulshan-e-Maymar, Karachi, I.O of the case.

Through titled criminal bail applications, applicant Hyder Abbas is seeking bail after arrest in three different crimes bearing No.198/2023, 353, 324, 186, 34 PPC, Crime No.199/2023 u/s 23(i)A Sindh Arms Act, 2013 and crime No.121/2023 u/s, 392, 397, 34 PPC registered at P.S. Gulshan-e-Maymar, Karachi. These bail applications were heard together and are being determined through this common order.

Learned counsel for the applicant argued that the applicant/accused is innocent, belongs to poor family and was coming from his workplace but intercepted by the police party. She further contended that the applicant/accused was nabbed in Crime No.198/2023 lodged under Section 353/324/186/34 PPC which is common known as police encounter but it is a case of in effective firing and rule of prudence dictates that where there is a firing from either side it should hit to public property or person but here in this case neither the public property was hit by the said encounter firing nor any person, therefore, the prosecution case needs further probe. She further stated that the prosecution also nominated the applicant/accused in another FIR

No.121/2023 under Section 392/397/34 PPC on the ground that the applicant/accused admitted his guilt during interrogation, however, it is settled principle that admission before police is of no value in the eyes of law, therefore applicant/accused be enlarged on bail.

On the other hand, learned Addl. P.G. argued that applicant/accused is habitual criminal involved in heinous crime and the subject crime is also not bailable and falls under the ambit of prohibitory clause of Section 497 Cr.P.C, therefore, applicant/accused is not entitled for bail.

I have heard learned counsel for the parties and perused the record. It is considered expedient to record here that the applicant/accused was nabbed in FIR No.198/2023 lodged under Section 353/324/186/34 PPC. Per contents of this FIR the applicant/accused and the police party fired each other but it is an admitted position that none from either side sustained any fire-arm injury; likewise vehicle of the police and public property not damaged due to said firing. The case is of ineffective firing and the rule of prudence dictates that when there is a firing between the police party as well as accused, it should hit either to the accused or to police party or police van but here in this case it has not been introduced on record that either side sustained any fir arm injury due to the said firing, therefore, the case of applicant/accused needs further probe¹.

Learned counsel for the applicant/accused pointed out that the applicant/accused was nabbed in FIR No.198/2023 and during course of interrogation, per police, he confessed his guilt to be involved in FIR

¹ (1) Shabbir Hussain Vs. The State (2007 YLR 1727), (2) Saud Hussain V/s The State, 2012 YLR 1161 Sindh, (3) Moazzam @ Muhaze V/s the State 2014 MLD 414 Sindh, (4) Qurban A;l & another V/s The State 2006 MLD 530 Karachi, (5) Ghulam Abbas & two others V/s The State, P.Cr.L.J 939 Karachi and Ghulam Abbas & four others V/s The State 2007 YLR 255 (Lahore).

No.121/2023 under Section 392/397/34 PPC. It is settled principle of Qanun-e-Shahdat Order, 1984² that confession made by an accused person while in police custody is not admissible³., therefore, the case of the applicant/accused needs further probe. Furthermore, it has not been introduced on record that a judicial confession of applicant/accused has ever been recorded by the learned Judicial Magistrate. The perception and discernment of the expression “further inquiry” is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. The *raison d'etre* of setting the law into motion in criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars. It is a well settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at the bail stage, if the facts of the case so warrant⁴. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time. In order to ascertain whether reasonable grounds exist or not, the Court should not probe into the merits of the case, but restrict itself to the material placed before it by the prosecution to see whether some tangible evidence is available against the accused

² Per Article 37.

³ 2001 P.Cr.L.J 86

⁴ Per Muhammad Ali Mazhar J. in *Fahad Hussain v. The State* (2023 SCMR 364)

person(s). Reasonable grounds are those which may appeal to a reasonable judicial mind, as opposed to merely capricious, irrational, concocted and/or illusory grounds. However, for deciding the prayer of an accused for bail, the question whether or not there exist reasonable grounds for believing that he has committed the alleged offence cannot be decided in a vacuum.

I have cautiously scanned and ruminated the material placed on record and reached to a tentative assessment that the case of the prosecution can only be resolved and determined by the trial court after full-fledged trial of the case but keeping in view the present set of circumstances, the case of the applicant/accused requires further inquiry.

As a result therefore, these bail applications are allowed. Applicant Hyder Abbas son of Gul Hassan is granted bail subject to furnishing solvent surety in the sum of Rs.20,000/- (rupees twenty thousand) in each bail application with P.R bond in the like amount to the satisfaction of Nazir of learned trial Court.

Before parting, it has been introduced on record that the report of police/challan has not been submitted. It is prescription of Law per Section 173 Cr.P.C to conclude the investigation and submit the police report/challan within 14 days which compliance has not been done by the I.O. present today. I.O. present in Court states that he could not submit the challan/charge sheet on personal ground. He is directed to submit the challan during course of the day and submit its copy before this Court by tomorrow.

JUDGE