

# IN THE HIGH COURT OF SINDHBENCH AT SUKKUR

CrI. Bail Application No. S- 425 of 2024

Applicant : Ghulam Sarwar alias Saroo, through  
Mr. Deedar Ali M. Chohan, Advocate.

Respondent : The State, through  
Mr. Khalil Ahmed Maitlo,  
Deputy Prosecutor General.

Date of Hearing : 19-07-2024  
Date of Decision : 19-07-2024

## **ORDER**

**Amjad Ali Bohio I:** This application has been filed by the applicant/accused under Section 497 of the Criminal Procedure Code (Cr.P.C), requesting bail pending trial in Crime No. 98 of 2024. The charges, under sections 401, 398, 353, and 324 of the Pakistan Penal Code (PPC), were registered at Police Station Padidan, District Naushahro Feroze.

2. Briefly, the facts of the case are that an FIR was lodged on 14.05.2024, at 11:00 PM by ASI Rahib Ali Kalhoru, the complainant, at Police Station Padidan against the applicant/ accused. The FIR alleges that during a patrol at around 9:30 PM, the complainant and his subordinate staff encountered three armed culprits at Jhariyan link road, Sada Wah. The culprits signaled the police vehicle, resulting in a 12-minute encounter between the parties. The applicant/accused was apprehended with a firearm injury to his leg, allegedly caused by his companions, while the other two accused escaped. A pistol with five live 30-bore bullets, unlicensed, was recovered from the applicant's possession. Upon enquiry, the applicant disclosed his name as Ghulam

Sarwar alias Saroo, son of Pathan Khan. His arrest was made, and a memo of arrest and recovery was prepared on the spot. After returning to the police station, the aforementioned FIR was registered, and a separate case under section 23(1)(a) of the Sindh Arms Act, 2013, was also filed.

3. During the investigation, the Investigating Officer recorded the statements of witnesses to the seizure memo under Section 161 of the Criminal Procedure Code (Cr.P.C), recorded the statements of the applicant, and sent the case property to the Forensic Science Laboratory (FSL) for inspection. Subsequently, the Challan was submitted to the trial court. The applicant filed Bail Application No. 1329 of 2024 before the learned trial court, which was dismissed via order dated June 15, 2024.

4. The learned counsel for the applicant contended that the applicant is innocent; the alleged case property never belonged to him nor was it ever recovered from him; the alleged recovery was fabricated by the police, and the applicant has been falsely and maliciously implicated in this fictitious case; there are no independent witnesses; all the alleged witnesses are police officials, which casts doubt on the prosecution's story; no such encounter took place; the applicant was taken away by SHO, P.S Tharushah on 6.05.2023, and unlawfully detained. A ransom of Rs. 200,000 was demanded for his release, of which Rs. 50,000 was paid, yet he was not released, consequently, his brother Muhammad Asghar filed Criminal Miscellaneous Application under Section 491, Cr.P.C on 29.05.2024;

however, the police, with mala fide intentions, implicated the applicant in this false case; the applicant is not a previous convict; the case against him requires further inquiry; the alleged offence is not punishable by death or life imprisonment; the applicant has no prior convictions and will neither abscond nor tamper with the evidence if granted bail. In support of his contentions, he relied upon cases of Bilal Mehmood v. The State (2018 MLD 1559) and Sunny v. The State (2018 YLR 1645).

5. On the other hand, the learned Deputy Prosecutor General opposed the bail application, submitting that the applicant participated in the police encounter and was apprehended on the spot in an injured condition, from whom a 30 bore pistol, its magazine, and rounds were recovered. There was no reason or occasion for the police officials to implicate the applicant in false cases, especially when the applicant has not alleged any enmity or mala fides on the part of the police officials. The offence committed by the applicant falls within the prohibitory clause of Section 497, Cr.P.C, and therefore, he is not entitled to the concession of bail.

6. I have heard the learned counsel for the applicant/accused and the learned Deputy Prosecutor General for the State, and have also reviewed the record.

7. At the very outset, it is noted that the encounter between the police party and the accused, both armed with sophisticated weapons, did not result in any injuries or damage to the police officials or the government vehicle present at the scene, despite the encounter lasting

for 12 minutes. Contention raised by the learned counsel for the applicant that it is improbable for cross-firing with sophisticated weapons at close range to occur without causing any injury or damage to police officials or their vehicle, which requires consideration. Admittedly, the police vehicle was parked at the location of the encounter, but no bullets reportedly hit it. This aspect of the prosecution's narrative appears unnatural and therefore requires further enquiry. Not a single injury or scratch was caused to any police official or the vehicle, but the accused was injured, specifically in the ankle. Reliance is placed on the case of *Ayaz Ali v. The State* (PLD 2014 Sindh 282). The learned Deputy Prosecutor General has fairly conceded that the investigation has been completed, the matter is proceeding before the trial court, and the applicant is not required for any further investigation. In such circumstances, there is no probability of the applicant tampering with the prosecution's case. The guilt or innocence of the applicant is yet to be established, as it will depend on the strength and quality of evidence produced by the prosecution and defense at the time of trial.

8. In view of the above discussion, this case requires further enquiry into the guilt of the applicant. Consequently, considering the grounds raised by the learned counsel for the applicant, there are sufficient grounds for further enquiry into the applicant's guilt. It is well-settled law that the benefit of doubt can also be extended even at the bail stage as held in the case of *Syed Amanullah Shah v. The State* (PLD 1996 SC 241), wherein Hon'ble Supreme Court has observed as under:-

*“To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. 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.”*

9. In view of above discussions, this bail application is, therefore, allowed and the applicant is admitted to the post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Fifty Thousand) with P.R bond in the like amount to the satisfaction of the trial Court. It is hereby clarified that the observations and the findings contained herein shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case strictly in accordance with law.

10. Above are the reasons of my short order dated 19.07.2024.

**JUDGE**

Ahmad