

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

CrI. Bail Application No. S- 429 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 J: The applicant/accused has filed this application under Section 497 of the Cr.P.C., requesting bail pending trial in Crime No. 99 of 2024. The case, registered at P.S. Padidan in District Naushahro Feroze, involves charges under Section 23(1)(a) of the Sindh Arms Act, 2013.

2. Briefly stated, the facts of the case are that an FIR was lodged on 14.05.2024 at 2300 hours by ASI Rahib Ali Kalhoro, the complainant, at Police Station Padidan against the applicant/accused. According to the FIR, the complainant, along with subordinate staff, was patrolling in a police mobile on Jhariyan Link Road Sada Wah at about 2130 hours when they encountered three armed culprits. An encounter ensued, lasting approximately 12 minutes, during which the applicant was apprehended after sustaining a firearm injury to his leg, allegedly caused by his companions. The other two culprits managed to escape. A pistol with five live, unlicensed 30-bore bullets was recovered from the applicant's possession. Upon inquiry, he disclosed his name as Ghulam Sarwar alias Saroo S/o Pathan Khan. His arrest was made, and

a memo of arrest and recovery was prepared at the scene. Upon returning to the police station, the aforementioned FIR was registered, along with a separate case for the encounter.

3. During the investigation, the Investigating Officer recorded the statements of witnesses to the seizure memo under Section 161, Cr.P.C. He also recorded the statement 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 then filed Bail Application No. 1330 of 2024 before the learned trial court, which was dismissed by order dated 15.06.2024.

4. The learned counsel for the applicant contended that the applicant is innocent, asserting that the alleged case property never belonged to him and was never recovered from him. He argued that the alleged recovery was fabricated by the police, and that the applicant has been falsely and maliciously implicated in this fictitious case. He further contended that there are no independent witnesses, and all alleged witnesses are police officials, which undermines the credibility of the prosecution's story. He claimed that no encounter took place and that the applicant was unlawfully detained by SHO, P.S. Tharushah on 06.05.2023. An amount of Rs. 200,000 was demanded for his release, out of which Rs. 50,000 was paid, yet he was not released. Consequently, his brother, Muhammad Asghar, filed a Crl. Misc. Application under Section 491, Cr.P.C on 29.05.2024. The counsel argued that the police, acting with mala fide intentions, implicated the applicant in this false case. He also argued that the applicant has no

prior convictions and that the case against him requires further inquiry. It was urged that the alleged offense is not punishable by death or life imprisonment, the applicant has not been convicted of any offense in the past, and he 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, arguing 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. He further contended that there was no reason or occasion for the police officials to falsely implicate the applicant, especially when no enmity with the police officials or mala fides on their part has been alleged by the applicant. It was urged that the offense committed by the applicant falls within the prohibitory clause of Section 497, Cr.P.C., and that the provisions of Section 23(1)(a) of the Sindh Arms Act, being part of a special law, have an overriding effect over all other laws. Therefore, the applicant 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. It is important to note that among many other articles designed as weapons of offense or defense, “pistols” are included in the definition of “arms” in Clause (c) of the Sindh Arms Act, 2013, and not

in the definition of “firearms” as defined in Clause (d) of the same Act. Adverting to the facts of the present case, the prosecution has alleged that an unlicensed pistol was recovered from the applicant. However, he was booked and has been challaned under Section 23(1)(a) of the Act, which is applicable to “firearms or ammunition” and not to “arms.” It will be for the trial court to decide whether the provisions of Section 23(1)(a) apply to the applicant’s case. The recovery of a “firearm” or ammunition in infringement of Section 3 of the Act provides for a punishment of imprisonment for a term which may extend to fourteen (14) years, along with a fine. In contrast, the punishment for possessing “arms” or ammunition, whether licensed or unlicensed, is provided in Section 24 of the Act, which is imprisonment for a term that may extend to ten (10) years, along with a fine.

8. At the very outset, it is noteworthy that the encounter took place between the police party and the accused persons, both of whom were armed with sophisticated weapons. However, none of the police party members received any injuries, nor was any damage found on the government vehicle present at the scene, despite the encounter lasting for 12 minutes. The contention raised by the learned counsel for the applicant that it is improbable for cross-fires with sophisticated weapons at close range to occur without causing any injury or damage to police officials or their vehicle requires consideration. Admittedly, the police mobile was parked at the location of the encounter, yet no bullets reportedly hit this vehicle. This aspect of the prosecution’s narrative appears unnatural and thereby requires further inquiry. Even more, no injuries or scratches were caused to any police officials or

their vehicle, with the only injury sustained by the accused being a gunshot wound to the ankle. The reliance is placed upon the case of Ayaz Ali v. The State (PLD 2014 Sindh 282).

9. 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 and will depend on the strength and quality of evidence produced by the prosecution and defense at the time of trial. In view of the above discussion, this case requires further inquiry into the guilt of the applicant. Consequently, considering the grounds raised by the learned counsel for the applicant, there are sufficient grounds for further inquiry 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 then 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.”

10. In view of the above discussions, this bail application is therefore allowed, and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs. 50,000/- (Fifty Thousand) with a P.R. bond in the like amount to the satisfaction of the trial court. It is hereby clarified that the observations and 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 the law.

11. Above are the reasons for my short order dated 19.07.2024.

JUDGE

Ahmad