

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Cr. Bail Appln. No.S-456 of 2024

Date Order with signature of Hon'ble Judge

1. **For orders on office objection.**
2. **For hearing of Bail Application.**

Applicant : Talib Hussain Jatoi, through Mr. Wakeel Ali Shaikh, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing : 15.10.2024.

Date of Order : 15.10.2024.

ORDER

ARBAB ALI HAKRO, J.- Applicant Talib Hussain, son of Nawab Ali, by caste Jatoi, seeks post-arrest bail in crime No.05 of 2024, registered at Police Station Kety Mumtaz, District Larkana, for offence under Sections 324, 353, 148, 149, PPC, after rejection of his bail application by the learned Additional Sessions Judge, Ratodero vide order dated 27.7.2024.

2. The prosecution case, in brief, is that on 24-6-2024, at about 0100 hours(night), a police party led by SIP Syed Munawar Ali Shah being, on patrolling, spotted 05 armed dacoits along with 02 captives allegedly abducted from the jurisdiction of Arija Police Station, on a tip-off, near the Jakks of Ghulam Ali Shaikh situated on the protective bund of Indus River, and on being challenged by the police to surrender there occurred an encounter between the police and the dacoits, which lasted for about 15 minutes, whereafter the police succeeded in arresting the applicant/accused Talib Hussain along with an unlicensed Pistol of 30-bore, whereas the other culprits made their escape good. The police also found the other two persons, namely, Motan, son of Ashique Ali Kalhoro and Abdul Khalique Kalhoro, who claimed to have been abducted by the dacoits. After carrying out the necessary formalities at the spot, the police party returned to the police station along with the apprehended

accused and the alleged abductees, where the complainant registered such FIR on behalf of the State.

3. Heard learned counsel for the applicant as well as learned DPG for the State and perused the record.

4. Learned counsel for the applicant has mainly argued that the alleged encounter never actually happened and that it is unbelievable that despite the shootout for 15 long minutes between the police and the armed accused persons, no member of the police party or the accused received any injury or even a scratch. He submits that the applicant has been falsely involved in this case and the alleged recovery has been foisted against him; that there is a general allegation against the applicant and no specific role is assigned to the applicant; that there is no past criminal record of the applicant and lastly that the case has been challaned and the applicant is not required to police for any investigation.

5. Conversely, the learned DPG opposed the bail application, contending that the police officials have no enmity with the applicant to involve him in this case falsely and that two abductees were also recovered by the police after the encounter with the dacoits.

6. It is an admitted fact that the alleged encounter between the dacoits and members of the police party lasted for 15 long minutes, but surprisingly, nobody from either side had sustained an injury, nor did any bullet hit the police van and firing was proved ineffective. So much so that the police party succeeded in not only apprehending the present applicant but also releasing the two alleged abductees from the captivity of dacoits; it was stated by the complainant in the FIR that they reached the place of the incident at 0100 hours and saw five unknown persons armed with weapons, who, on seeing the police, started firing, which was retaliated by the police, and the encounter continued for 15 minutes thereafter they apprehended one accused, recovered pistol from him, sealed the same, conducted his personal search, untied the alleged abductees and prepared mashirnama of arrest and recovery at the spot; however, the perusal of such mashirnama reveals that it was prepared at

0100 hours. If so, where did the time go that was consumed in apprehending the accused, enquiring from him, conducting his search, and effecting the recovery of the weapon. Even the property was also sealed. The alleged abductees/eye-witnesses have recorded their statements u/s 161, Cr.P.C before the I.O., in which they have nominated the present applicant; however, said witnesses had recorded such statements on 02.07.2024, i.e. with the delay of 08 days. It is an established principle of law that delay in recording of statement of PW u/s 161, Cr.P.C reduces its value to nil. Reliance is placed on the case reported as *Abdul Khaliq v. The State* (**1996 SCMR 1553**).

7. No doubt, in a post-arrest bail, only tentative assessment is to be made, and deeper appreciation or evaluation of evidence is neither desirable nor permissible, but the benefit of the doubt is to be extended to the accused even at the bail stage if the facts of the case so warrant. Reliance is placed on the case reported as *Muhammad Sarfraz Ansari v. The State & otehrs* reported as (**PLD 2021 Supreme Court 738**), wherein the following invaluable observations were rendered:-

"4. We are fully cognizant of the well-settled principle that at the bail stage the court is not to make deeper examination and appreciation of the evidence collected during investigation or to conduct anything in the nature of a preliminary trial to determine the accused's guilt or innocence. 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 vacuum. The court, for answering the said question, has to look at the material available on record when the bail is applied for and be satisfied that there is, or is not, prima facie some tangible evidence which, if left unrebutted, may lead to the inference of the guilt of the accused."

8. Prima facie, the story in the instant case, appears hard to believe. Even otherwise, in the absence of any injury to any police officials, the offence under Sections 324 and 353, PPC, is yet to be proved by the prosecution. Admittedly, there is a general allegation against the applicant, and no specific role is assigned to the applicant. Learned DPG does not deny that the applicant has no criminal record. The case has already been challaned, and police do not require the applicant in connection with the investigation. Whether the police encounter was

genuine is yet to be proved at trial after evidence is led. Upon a tentative assessment of material brought on the record, it appears that the case against the applicant requires further enquiry as envisaged under sub-section (2) to Section 497, Cr.P.C; therefore, the applicant has been able to make out his case for grant of bail pending trial.

7. Accordingly, an instant bail application is allowed. The applicant is admitted on bail upon furnishing a solvent surety in the sum of Rs.100,000/-(rupees One Lac) and a P.R. Bond in the like amount to the satisfaction of the trial Court.

JUDGE

*Qazi Tahir PA/**