

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

(1) Cr. Bail Appln. No. S- **604** of **2024**.

(2) Cr. Bail Appln. No. S- **612** of **2024**.

Applicant : Abdul Jabbar Sabzoi present (on interim bail).
(Cr.B.A. S-604/2024) through Mr. Muhammad Afzal Jagirani, Advocate.

Applicant : Nadir Ali Sabzoi
(Cr.B.A. S-612/2024) through Mr. Abid Hussain Qadri, Advocate.

The State : Through Mr. Ali Anwar Kandhro,
Additional Advocate General, Sindh.

Date of hearing : **21.11.2024**.

Date of Order : **21.11.2024**.

O R D E R

Arbab Ali Hakro, J.- By this common order, I intend to dispose of Cr.B.A. No.S-604/2024, moved on behalf of applicant/accused Abdul Jabbar Sabzoi, for bail before arrest and Cr.B.A. No.S-612/2024, moved on behalf of applicant/accused Nadir Ali Sabzoi for bail after arrest, as they have arisen out of one and same crime bearing No.285/2024, registered at P.S A-Section, Kandhkot, for offence under Sections 324, 353, 216-A, 400, PPC.

2. Having been declined the prayer for grant of pre-arrest bail to applicant Abdul Jabbar Sabzoi vide order dated 05.10.2024 and the plea for grant of post-arrest bail of applicant Nadir Ali Sabzoi vide order dated 10.10.2024 by the Court of learned Sessions Judge, Kashmore at Kandhkot, they have approached this Court with the same pleas.

3. Facts of the prosecution are mentioned in detail in the memo of bail applications; therefore, the same need not be reproduced hereunder.

4. Learned Counsel for the applicants argued that the alleged encounter never actually happened and that it is unbelievable that despite the shootout for 08 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 applicants have been falsely involved in this case and nothing incriminating was recovered from applicant Nadir Ali after his arrest; that there is a general allegation against the applicants of making ineffective firing upon the police party, and no specific role is assigned to them; that there is no past criminal record of the applicants except an identical nature case registered against applicant Nadir Ali vide Crime No.62/2016 at the same Police Station, i.e. A-Section Kandhkot, u/s 324, 353, 427, 148, 149, PPC and lastly that the case has been challaned; the applicant/accused Nadir Ali is not required to police for any investigation.

5. Conversely, the learned Addl. P.G. opposed the bail applications, contending that the applicants are nominated in the FIR with the specific role of firing upon and deterring the members of the police party from discharging their official duties and that the police officials had no enmity with the applicants for involving them in this case falsely.

6. On the tentative assessment of the material available on the record, it appears that no independent person was associated by the complainant despite having prior information regarding the availability of the accused persons at the scene of the offence; thus, there is a violation of Section 103, Cr.P.C; therefore, the story set forth in the FIR appears to be doubtful. The whole case of the prosecution rests upon the evidence of the police officials; therefore, no question arises for tampering with their evidence at the hands of the applicants/accused. Hence, evidence from the police officials is required to be minutely scrutinized at the time of trial to determine whether the offence as alleged in the FIR was committed by the applicants/accused in the manner as narrated by the complainant or otherwise. It is also admitted position that the alleged encounter between the police and the accused lasted for 08 minutes, yet neither the accused nor the police personnel sustained any bullet injury. Even though no bullet hit the police van, this is a case of ineffective firing. In the case of *Rab Nawaz v. The State (1990 SCMR 1085)*, the Supreme Court of Pakistan observed as under:-

“In this background and in view of the absence of any bullet injury, the fact whether the petitioner did intentionally fire at the police party, but was unsuccessful to hit anybody, because the bullet missed, or the case has been padded by the inclusion of this false firing, assumes prominence and since this matter cannot be determined, till proper evidence is recorded in the case, we would, taking all circumstances into consideration, allow bail to the petitioner.”

7. Apart from that, all witnesses and mashirs are police officials; therefore, the question of tampering with prosecution evidence does not arise. There is no iota of evidence on record to show the previous involvement of the applicants in any case of dacoity, etc., except an identical nature case registered against applicant Nadir Ali vide Crime No.62/2016 at the same Police Station, i.e. A-Section Kandhkot, u/s 324, 353, 427, 148, 149, PPC. Therefore, the applicability of the above sections of law is yet to be determined during the trial. Applicant Nadir Ali has been behind bars since his arrest, and his physical custody is no longer required by the police for further investigation, whereas applicant Abdul Jabbar Sabzoi, after the grant of interim pre-arrest bail, has not misused such concession, rather he has joined the investigation and is regularly attending the trial proceedings. This is a fit case requiring further probe into the guilt of the applicants.

8. Accordingly, both bail applications are allowed. The interim pre-arrest bail granted to applicant Abdul Jabbar Sabzoi on 10.10.2024 is hereby confirmed, with direction to deposit additional surety of Rs.30,000/- (rupees thirty thousand) and P.R. Bond in the like amount before the Additional Registrar of this Court, whereas applicant Nadir Ali Sabzoi is granted post-arrest bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (rupees fifty thousand only) and P.R. Bond in the like amount to the satisfaction of trial Court.

9. The observations are tentative, which shall not affect the case of either party at trial.

JUDGE

Qazi Tahir PA/*