

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. B.A. No. D- 215 of 2014

For hearing

Present:
Mr. Justice Naimatullah Phulpoto &
Mr. Justice Farooq Ali Channa.

03.06.2014.

Mr. Ali Gul Abbasi for applicant/accused.
Mr. Zulfiqar Ali Jatoi, DPG for the State.

ORDER

Naimatullah Phulpoto, J: Applicant/accused Gulzar @ Gulo @ Gulbahar seeks post arrest bail in Crime No.56 of 2012, registered at Police Station, Sarhad, District Ghotki, on 20.6.2012, under Sections 324, 353, 397 PPC read with section 7 ATA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 20.6.2012 HC Sanwal Khan, incharge PP Jahanpur of P.S. Sarhad left along with subordinate staff for patrolling duty. At 0200 hours police party reached near the otaq of Shah Nawaz Samejo, electric bulbs were burning at that time. Police party saw 10 armed persons on the headlight of motorcycle and bulbs. they were 1. Gulzar Sundrani, 2. Muhammad Panah alias Panho Sundrani, 3. Sarwar alias Sanaullah alias Tinoo Sundrani, 4. Ghulam Nabi Sundrani, 5. Sohno Shar, 6. Mumtaz Khokhar, 7. Shah Beg, 8. Manzoor alias Bazoori Mahar, 9. Ashiq Mahar and 10. Gulzar Mahar. It is alleged that there was encounter in between the police and accused. It is alleged that accused Mohammad Panah and Mumtaz caused butt blows to PC Sahib Dino and tried to snatch from him official SMG. On the resistance, it is alleged that accused Gulzar Sundrani fired from his KK at P.C Sahib Dino which hit him. Accused also fired upon police. Police also fired upon accused. Encounter continued for about 10 minutes. Thereafter, accused succeeded in running away. It is stated that PC Sahib Dino had sustained injuries by butt blows and he had also received

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fire arm injury at his right arm. Such information was conveyed by HC Sanwal Khan to SHO, P.S, Sarhad. In the meanwhile, SHO, P.S, Sarhad along with subordinate staff reached at place of incident and footprints were tracked which disappeared at Sarhad forest. FIR of the incident was lodged under the above referred sections at P.S. Sarhad.

3. Applicant/accused was arrested during investigation. On conclusion of investigation challan was submitted against the accused under the above referred sections.

4. Bail application was moved on behalf of applicant/accused, same was rejected by learned Judge, ATC, Sukkur vide order dated 21.03.2014. Thereafter, the applicant/accused approached this court.

5. Mr. Ali Gul Abbasi, learned Counsel for applicant/accused mainly contended that co-accused Mumtaz has already been granted bail by this Court in Cr.B.A.No.D-536/2013 and case of present applicant/accused is identical and bail has been granted to co-accused Muhammad Panah by trial Court. He further contended that the injury attributed to the applicant/accused is on non-vital part of the body. The applicant/accused is behind the bars since two years. Lastly, he submitted that injury has been declared by the Medical Officer as shajjah-i-khafifah which is punishable up to three years. In support of his contentions, he relied upon case of Junaid and 2 others v. the State (2000 P.Cr.L.J 1510).

6. Mr. Zulfiqar Ali Jatoi, learned Deputy Prosecutor General has opposed the bail application on the ground that the name of the applicant/accused did transpire in the FIR and the applicant/accused had caused firearm injuries to PC Sahib Dino. Lastly he submitted that the alleged offence falls under prohibitory clause of section 497 Cr.P.C.

7. We are inclined to grant bail to the applicant/accused for the reasons that co-accused Mumtaz Khokhar more or less in similar

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circumstances has been granted bail by this Court vide Cr.B.A. No.D-536/2013. Co-accused Muhammad Pannah has been granted bail by trial Court. Injury attributed to the applicant/accused is on non-vital part of the body. It has been declared by the Medical Officer as shajjah-i-khafifah which is punishable up to three years. It is apparently surprising as to how police identified all accused by name. Applicant/accused is behind the bars since two years. All the PWs are police officials. There is no question of tampering with the evidence. Intention of the applicant/accused Gulzar is yet to be determined at the trial. In the circumstances of the case and while relying upon the above cited authority, keeping in view principle of rule of consistency, prima facie, case against applicant/accused requires further enquiry, as contemplated under subsection (2) of section 497 Cr.P.C. Therefore, concession of bail is extended to the applicant/accused subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees one lac) and PR bond in the like amount to the satisfaction of trial Court.

8. Needless to say, observations made hereinabove are tentative in nature. The trial court shall not be influenced by such observations while deciding the case on merits.

9. These are the reasons in support of our short of even date.

JUDGE

JUDGE

N.M.