

***IN HIGH COURT OF SINDH, BENCH AT SUKKUR.***

***Cr. Bail Application No.D- 150 of 2017***

Present:

Mr. Justice Muhammad Junaid Ghaffar &  
Mr. Justice Khadim Hussain Tunio, JJ

Applicants:

1. Wazir son of Mushtaque Jamali,
2. Raja alias Raju alias Rabel Oadho,
3. Abdul Waheed son of Haji bycaste Ulro

Through their Advocate Mr. Abdul Haque G. Oadho.

Respondent:

The State through Mr. Zulfiqar Ali Jatoi  
Addl.P.G

Date of hearing:

21.06.2017.

Date of order :

21.06.2017

**ORDER.**

**KHADIM HUSSAIN TUNIO-J:-** Through this application under section 497 Cr.PC, applicants Wazeer Jamali, 2. Raja alias Raju alias Rabelo Odho and Abdul Waheed Ulro have sought their release on bail after arrest in case arising out of FIR No. 23 of 2016, registered under sections 302, 324, 353,404, 427, 109, 212, 148, 149 PPC & 6/7 Anti-Terrorism Act, 1997 registered with Police Station Faiz Muhammad Narejo, District Khairpur Mirs'.

2. Precisely stated the facts of the prosecution case are that on 7.10.2016 at 1500 hours complainant SIP Manshad Ali Kalwar of Police Station Piryaloi lodged F.I.R, stating therein that on 07.10.2016 he along with his subordinates SIP Loung Khan and others left Police Station in Government Police mobile bearing Registration No. SPC-922 vide entry No.32 at 0500 hours for



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investigation of F.I.R No.49/2016 under sections 395, 457, 342 PPC registered at Police Station Piryaloi and were busy in tracking the foot-prints meanwhile when they reached near Lakha Landhi, a spy information was received that accused persons are present in Banana Orchard, hence on receipt of such information intimated to his high-ups for help. After some time Inspector Nadir Ali Bhatti of Police Station Faiz Muhammad Narejo with his staff came there and then they proceeded towards the pointed place and when at about 1000 hours reached at Lakha Landhi protective dike where complainant party saw that 25/26 armed persons came out from Banana and cotton crops who were seen and identified by the complainant party every one 1. Ahmed alias Ali Ahmed, armed with kalashnikov, 2. Bilawal alias Biloo alias Muhammad Ali, armed with G-3 rifle, 3. Sain Dino, armed with G-3 rifle, 4. Allahyar 5. Aziz, 6. Shahoo alias Shahan 7. Majeed alias Mujoo 8. Aslam, 9. Abdul Samad, armed with kalashnikovs while 15/16 unidentified persons armed with kalashnikovs and G-3 rifles. The police party gave hakal by apprising their identity and asked them to throw weapons and surrender themselves before police but they deterred the police party in performing their lawful duty and made direct fires upon police with intention to kill them. Thereafter police party took positions and made firing upon accused in their self-defense .It is further stated in the F.I.R that during the encounter between police party and accused, police constables PC Mubarak Ali and PC Mukhtiar Ali raised cries and disclosed that they have sustained firearm injuries while two of the accused persons also raised cries and stated that they have received firearm injuries. It is also stated in the F.I.R that during encounter of police officials of Police Station F.M Narejo namely PC Muhammad Younis, PC Atta Muhammad, PC Allahdino and PC Altaf Ali also raised cries that they have received injuries. Thereafter police party proceeded and saw that accused Bilawal alias Biloo Narejo



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was lying dead and one G-3 rifle loaded with magazine and one bandolier containing three magazines were lying beside him which were taken into custody of the police. The complainant party also saw two injured accused escaped-away in the cotton crop after throwing their weapons which were taken into possession. Thereafter police party saw six accused on three motorcycles came from southern side katcha path who were also identified as 1. Raja alias Rajoo Oadho 2. Abdul Waheed Ulro 3. Farooque Shah while three unknown accused, meanwhile accused who were in banana garden made indiscriminate firing upon police and police also made firing in self-defense . During firing two accused persons came to take dead body of killed accused while other accused were continuously firing upon police, ultimately accused persons who came on motorcycles succeeded to take-away killed and injured accused on motorcycles, such encounter was continued for one and a half hours. During firing PC-Mubarak Narejo who had sustained firearm injuries was found dead. The official ammunition of deceased PC-Mubarak Narejo was found missed as the same was taken-away by the accused and further police found that PC Mukhtiar Hussain was lying in injured condition and his official G-3 rifle was damaged. It is also alleged that police mobile of Police Station F.M Narejo hit by bullets and was damaged. After completing legal formalities dead body of deceased and injured persons were dispatched to Civil Hospital Khairpur for post mortem and medical treatment. From the place of incident police party received empties which were fired by the accused as well as from the side of police party, during such process police party received intimation that injured PC-Muhammad Younis succumbed to injuries. Police party then chased the accused but had fled-away. Ultimately complainant came at Police Station and lodged F.I.R on behalf of State.



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3. Learned counsel for the applicants submits that applicants are innocent and have falsely been implicated in this case with malafide intentions and ulterior motives; that alleged encounter continued for about one and half hours i.e 35 empties of G-3 rifle, 40 empties of SMG rifle, 50 empties of Kalashnikov, 60 empties of G-3 rifle secured from the place of vardat; that police party fired upon accused; that co-accused Attaullah fired upon police party. He also submits that six persons came on motorcycles and took-away dead-body of deceased dacoit; that no blood drop was found at the place of scene as per mashirnama of place of incident; that co-accused Saindino son of Ahmed alias Amir Ahmed is in custody since 03.12.2015 whose trial has been notified as inside trial at C.P-I Sukkur; that accused Abdul Samad and Abdul Waheed were present in the Court of learned Assistant Sessions Judge Sukkur in Crime No.71/2014 under sections 324, 353 PPC of Police Station Piryaloi vide case diary dated 07.10.2016; that as per CDR report applicant namely: Saindino son of Ahmed alias Amir Ahmed was in the vicinity of Piryaloi; that the Investigating Officer has misplaced documents produced by the accused during course of investigation; statements of P.Ws DSP Abdul Samad, PC Muhammad Nawaz and Wahid Bakhsh have been recorded; that name of applicant/accused Wazeer does not transpire in the F.I.R, whose name has been disclosed in the further statement by the complainant dated 27.10.2016, which has been recorded after 20 days of alleged commission of the offence; P.Ws have implicated Roshan, whose name has been placed in column No.2 of the challan-sheet by the police; that Section 21-J P.P.C has not been applied by the prosecution. He relied upon the case law reported in PLD 1995 SC 34, 2017 P Cr.L J 631, P L D 2007 Peshawar 25, 1995 S C M R 1302, 1997 S C M R 1829, 2016 P Cr.L J 19, 2011 Y L R 340, 2004 P.Cr.L.J 869, 2012 S C M R 573, 2003 P Cr.L J 518 (c).



4. Conversely learned D.P.G has made his submissions that in this case two Police constables have lost their lives while four police constables have sustained firearm injuries at the hands of accused who are involved in the commission of the offence. The F.I.R is promptly lodged, whereas the medical evidence also supports the prosecution case. The offences with which applicants have been charged fall within prohibitory clause of Section 497 Cr.P.C. He has opposed for grant of bail.

5. We have given due consideration to the arguments advanced by the learned Counsel for the parties and have gone through the relevant record.

6. It has been observed that the applicants have been duly nominated in the promptly lodged F.I.R with specific role of causing injuries to the deceased police officials namely: PC Mubarak Ali, PC Muhammad Younis and injured Police constables PC Mukhtiar Ali, PC Atta Muhammad, PC Allahdino and PC Altaf Ali. The plea of alibi raised by the learned Counsel does not carry any weight in the presence of the overwhelming prosecution evidence wherein the complainant as well as witnesses resolutely stick to their stance taken in the F.I.R as well as statements under Section 161 Cr.P.C. Further the plea of alibi has its own limitation in the contest of bail which obviously is not same thing as determination on regular trial; that all such matters Court seized of the case is to be adjudged. The medical evidence also supports version of prosecution. It is a case in which two innocent persons have lost their lives allegedly at the hands of the applicants and co-accused and four innocent police constables sustained serious injuries. The offence with which the applicants have been charged attracts the prohibitory clause of Section 497 (1) Cr.P.C. There is ample material available against the applicants/accused prima facie connect them with the crime imputed to them; that name of accused Wazeer has not named in the F.I.R but his name has



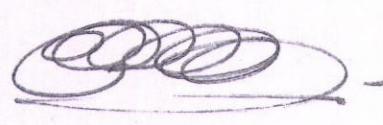
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been given in further statement by the complainant who was arrested in Crime No.101/2016 U/S 324, 353, 212, 216, 148,149 PPC & 7-Anti-Terrorism Act, 1997 and Crime No.102/2016 U/S 23(i) A Sindh Arms Act, 2013 of Police Station Economic Zone district Khairpur. Even otherwise the applicants namely: Abdul Samad and Abdul Waheed have taken contradictory plea on one hand they have stated that they were present in the Court of learned Assistant Sessions Judge Sukkur in in Crime No.71/2014 under sections 324, 353 PPC of Police Station Piryaloi vide case diary dated 07.10.2016 on the other hand relied on CDR call record, according to which the location of the accused was within the vicinity of Piryaloi city which is near to the place of incident. Further the dead body of deceased dacoit has been recovered by the police from the garden. The applicants/accused have not alleged or proved any malafide or enmity with the police.

7. The Hon'ble apex Court has been pleased to observe in case of Imtiaz Ahmed and others v. The State reported in *1986 SCMR 192* at relevant page 195-B that:

*"Considering that; the accused have been attributed a positive role and active role in the murder in as much as they are alleged to have effectively fired at the deceased causing injuries which resulted in his death, High Court was justified in the circumstances of this case to have refused bail to them"*

8. It is well settled principle of law that; mere possibility of further inquiry which exist almost in every criminal case is no ground for treating the matter as one under sub-section 2 of section 497 Cr.P.C. In this respect we are



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fortified in our view with the principle laid down in case law reported in 1985 SCMR-195, PLD 1988 S.C 621 and 1991 SCMR 1849.

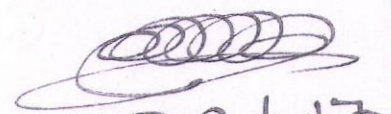
9. The Hon'ble apex Court has also been pleased to observe in case of Shah Zaman and two others v. the State and another reported in *PLD 1994 SC 65* at relevant page 69.B that:

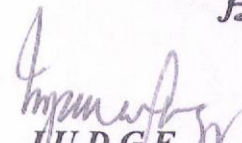
*"It is well established principle of law that at the stage of bail and before recording of evidence in the trial Court, only tentative assessment is to be made for the purpose of deciding bail application and it is not permissible to go into the details of evidence one way or other because that might prejudice the case of one party or other".*

10. With regard to case law cited at bar by learned counsel for the applicants is concerned, same is not applicable in the present case as based on different facts and circumstances from the case in hand.

11. For what has been discussed above, the applicants/accused failed to make-out their case for grant of post arrest bail, therefore, their bail application was dismissed vide our short order dated 21.06.2017.

These are the reasons of our short order dated 21.06.2017.

  
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A.R.BROHI