

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.D-149 of 2017

Qadir Bux Katohar

V/S

The State

Date Order with signature of Judge

Present:

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

For hearing

Date of hearing: 05-6-2017

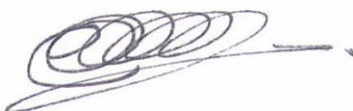
Mr. Saeed Ahmed A. Panhwar, Advocate for the Applicant

Mr. Abdul Rehman Kolachi, A.P.G for the State

ORDER

Khadim Hussain Tunio, J: Through captioned application u/s 21-D of Anti-Terrorism Act, 1997 r/w section 497 Cr.P.C, the applicant seeks his admission on post-arrest bail in FIR No.46/2014 registered at Police Station Kumb, District Khairpur Mirs, u/s 365-A, 324, 353, 148, 149, 215 PPC r/w section 7 Anti-Terrorism Act, 1997.

2. Succinctly the facts of the prosecution case are that on 18.3.2014 at 1100 hours complainant Inspector Ayaz Hussain Qureshi lodged FIR at Police Station Kumb, stating therein that on 18.3.2014 applicant Qadir Bux armed with Kalashnikov alongwith his rest of the companions deterred the police party from performing their lawful duty at old National Highway and made straight firing upon them with intention to commit their Qatl and during encounter applicant and his companions while leaving three persons/abductees at place of encounter fled away for which the FIR was registered.



3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case by the police; that there is 6 hours delay in lodging of FIR which has not been explained by the complainant; that in the alleged encounter none received any injury from either side; that the abductees are not traceable and shifted to unknown place per statement of process-server; that the applicant is in custody in the present case since 8.4.2014; that co-accused Muhammad Bux has already been admitted to post-arrest bail by this court vide order dated 27.11.2014; that case of applicant calls for further enquiry. In support of his contention he has placed his reliance on the cases reported in 1995 SCMR 127, 2012 MLD 599 and 2011 MLD 2238.

4. Conversely, learned APG has opposed the bail plea while submitting that specific role has been assigned to the applicant by the police officials and abductees; that the applicant has been fully implicated by the PWs in their statements u/s 161 Cr.P.C; that the applicant has no case for bail; that the bail application may be dismissed.

5. Having heard and perused the record we have paid anxious consideration to the submissions made by the learned counsel for the applicant and learned APG for the State. Admittedly, the name of the present applicant transpires in the FIR with specific role that on the day of incident he duly armed with Kalashnikov alongwith his rest of the companions formed an unlawful assembly and in prosecution of their common object made straight firing upon the police party/complainant party headed by Inspector Ayaz Hussain Qureshi with intention to commit their Qatl. It is also admitted position that during police encounter complainant party got released/secured three abductees namely Azmat Golo, Rehmatullah Golo and Gul Khan Golo, who were alleged to have been abducted by accused persons and kept them in captivity per FIR and statements of PWs. The applicant alongwith co-accused abducted alleged abductees on 5.3.2014 from Peshawri hotel Khairpur Mirs



and wrongfully kept them in their captivity in order to recover ransom amount from the relatives of the said abductees. Applicant and co-accused received ransom amount of Rs.900,000/- from relatives of the abductees but they failed to release the abductees and made demand for more ransom amount from the relatives of the abductees. It is further admitted position that Kalashnikov has been secured on the pointation of applicant by the I.O during investigation. The trial has been commenced, charge has been framed and prosecution has examined PWs Inspector/complainant Ayaz Hussain Qureshi and PC Altaf Hussain, who have fully implicated the applicant in the commission of alleged incident. There is sufficient iota of evidence to connect the applicant/accused with the offence with which he has been charged which is punishable with imprisonment for life and falls within the prohibitory clause of section 497 Cr.P.C.

6. With regard to delay in lodging of FIR, the same has been fully explained by the complainant. The honourable apex court has observed in the case of Haji Guloo Khan Vs. Gul Daraz Khan and others (1995 SCMR-1765), at relevant page-1773, that no doubt, the benefit arising from the delay, in lodging the FIR, goes to accused, which could also be taken into consideration alongwith other circumstances, in the case at the stage of deciding the bail application, but delay in lodging the FIR, alone is never considered a circumstances sufficient for grant of bail in a case involving capital punishment.

7. With regard to co-accused Muhammad Bux has been granted bail by this court is concerned, the case of co-accused was on different footings from the case of present applicant as whose name does not transpire in the FIR and placed in column-II of the challan sheet as well as co-accused Muhammad Bux has been recovered in the raid conducted by the Raid Commissioner in the habeas corpus petition u/s 491 Cr.P.C filed with learned Sessions Judge Khairpur and he was released.



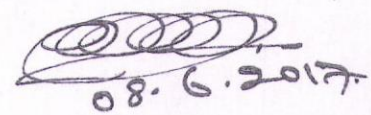
8. With regard to the contradictions in the evidence of PWs Inspector Ayaz Hussain Qureshi and PC Altaf Hussain, it is settled principle of law that; at the stage of bail and before recording of evidence in the trial court, only tentative assessment is to be made for the purpose of deciding bail application 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 others. In this respect reliance may respectfully be placed on case of Shahzaman and 2 others Vs. The State and another (PLD 1994 S.C 65 at relevant page 69 B).

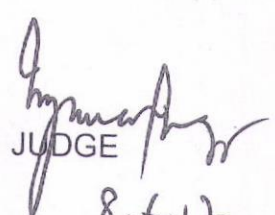
9. As far as the case law referred by learned counsel for applicant/accused is concerned, same is not applicable in the present case as based on different facts and circumstances from the case in hand.

10. For what has been discussed above the applicant has failed to make out the case for grant of post-arrest bail. Accordingly, the bail application is dismissed.

11. Above are the reasons of short order dated 05.6.2017 through which the present bail application was dismissed.

12. It is needless to state here that whatever has been stated above is tentative in nature and will not cause any prejudice to the case of either party at the trial.


08.6.2017
JUDGE


JUDGE
8.6.17