

## ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1<sup>st</sup> Criminal Bail Application No.D-04 of 2021

Date of hearing	Order with signature of Judge
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Before:

Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Abdul Mobeen Lakho.

Date of hearing: 09.06.2021

Date of Order: 09.06.2021

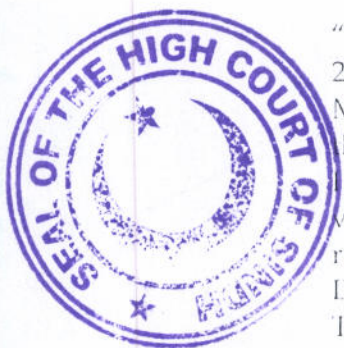
Mr. Azhar Hussain Abbasi, Advocate for the Applicants.  
Mr. Muhammad Noonari, Deputy Prosecutor General Sindh.

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**Naimatullah Phulpoto J. :** Through instant bail application, applicants Ahmeddin and Asif both sons of Amanullah by caste Shar seek post arrest bail in Crime No.16/2021, P.S Stuart Ganj for offence punishable under sections 324, 353, 148, 149, 120-B P.P.C read with Section 6/7 Anti-Terrorism Act, 1997 after rejection of their bail application by learned Special Judge Anti-Terrorism, Shikarpur vide order dated 26.02.2021, hence, present bail application is filed.

2. The brief facts of the prosecution case as mentioned in the order of the Trial Court are as under:

"The brief facts as unfolded in the FIR registered on 31.01.2021 at 2200 hours at PS Staurt Ganj District Shikarpur by ASI Mohammad Yaqoob Soomro of PS Staurt Ganj Shikarpur are that on the same day he alongwith his subordinate staff namely IC Mehboob Ali, PC Deedar Ali, PC Ayaz Ali left PS in govt vehicle No.SPC-613 driven by PC Ghulam Mohammad vide roznamcha entry No.28 at 2000 hours for patrol duty in the area. During patrolling of various places, when they reached at Tharoopur mohalla, they received spy information that accused Pervez @ Paroo s/o Shahnawaz Jatoi r/o village Ali Hassan Jatoi and others have collected arms and ammunition in the otaq of Amanullah Shar in order to create terrorism in the city and planning to shift rocket launchers and hand grenade from that





place to another. On receiving such information, complainant party proceeded towards pointed place and when they reached at 2100 hours at otaq of Amanullah Shar at Tharoopur mohalla, they saw on the light of bulbs and vehicle and identified accused 1. Pervez @ Paroo s/o Shah Nawaz Jatoi r/o village Ali Hassan Jatoi, 2. Gul Hassan s/o Amanullah Shar r/o Tharoopur mohalla having rocket launcher on motorcycle, 3. Ahmed din armed with repeater, 4. Asif armed with TT pistol, 5. Sanaullah armed with TT pistol all three sons of Amanullah Shar r/o Tharoopur mohalla and 5/6 unidentified accused whose faces were open, they have seen them clearly and could identify them if shown to them again also armed with Kalashnikovs were coming out from otaq. As per FIR the complainant party directed the culprits to surrender, to which all accused in order to create terror started firing from their respective weapons upon complainant party with intention to kill them and deterred them from discharging of their lawful duties, the complainant party also retaliated while taking position and informed on wireless to control room to higher authorities about the incident and requested for help, after about 10 minutes of the encounter, ASI Allah Dino Bhutto PS New Foujdari alongwith staff, SHO Shah Nawaz Khoso PS Lakhi Gate alongwith staff, SHO Safeeullah PS Staurt Ganj alongwith staff reached there in govt vehicles and after about 15/20 minutes, complainant party succeeded to apprehend two accused Ahmed din Shar alongwith repeater and Asif Ali Shar alongwith TT pistol on the spot whereas remaining accused succeeded to escape away from the scene. The complainant due to non availability of private mashirs, appointed HC Mehboob Ali and PC Deedar Ali as mashirs and inquired from the apprehended accused about their names etc to which one apprehended accused disclosed his name as Ahmed din s/o Amanullah Shar r/o Tharoopur mohalla Shikarpur and his secured repeater was checked and found loaded with one cartridge. Another apprehended accused disclosed his name as Asif s/o Amanullah Shar r/o Tharoopur mohalla and his secured TT pistol was checked and found loaded with two live bullets in its magazine. Both apprehended accused failed to produce valid license/permit of secured weapons. The complainant prepared mashir nama of arrest and recovery on the spot in presence of mashirs HC Mehboob Ali and PC Deedar Ali. Thereafter complainant returned at PS Staurt Ganj alongwith arrested accused and secured property and lodged the FIR against the above named accused to the above effect on behalf of state and also lodged two separate FIRs against both arrested accused under arms act. After usual investigation challan was submitted against the accused for offence under sections 170/173 Cr.P.C.



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3. Learned advocate for the applicants-accused mainly contended that it was a fake police encounter; none received injury from the either side; investigation is complete and presently applicants-accused are facing trial before the Trial Court. Lastly, it is submitted that case requires further enquiry. In support of his contentions, learned counsel for the applicants-accused has placed reliance upon case law reported as 1990 SCMR 1085 (*Rab Nawaz v/s. The State*), 2018 MLD 1559 (*Bilal Mehmood v/s. The State*), 2017 P.Cr.L.J. 742 (*Jaleel Ahmed Pitafi and others v/s. The State*) and 2020 P.Cr.L.J. Note 199 (*Muhammad Raees v/s. The State*).

4. Learned Deputy Prosecutor General has admitted that no one has received injury in the incident from the either side. However, he has opposed the bail application.

5. We have carefully heard learned counsel for the parties and perused the relevant record. According to the prosecution case police encounter took place on 31.01.2021 at 2100 hours at the otaq of Amanullah Shar. It is alleged that applicants and others were armed with highly sophisticated weapons and fired upon the police party, in retaliation police also fired in their self-defence, but none from both the sides received any injury/scratch. Apparently, the application of 324 P.P.C is yet to be determined at trial. All the prosecution witnesses are police officials, therefore, question of tampering with the prosecution evidence does not arise, case has been challaned and the applicants-accused are no more required for investigation. In the case of Rab Nawaz supra the Honourable Apex Court has held as under:

"The injury on the head of Iftikhar Ahmed Constable is simple, whereas the other two injuries on the injured witnesses have not been explained in the F.I.R. The contention that Abdul Hameed Bajwa, Inspector/S.H.O. Police Station Miana Gondal, bore grudge against the petitioner for having made a statement against him before the Additional Superintendent of Police on 23<sup>rd</sup> August, 1989, is not without significance. In this background and in view of the absence of any bullet injury, the fact whether

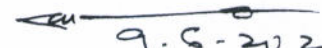


the petitioner did intentionally fire at the police party, but was unsuccessful to hit anybody, because the bullet missed, or the case has been padded by the inclusion of this false firing, assumes prominence and since this matter cannot be determined, till proper evidence is recorded in the case, we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

From the perusal of F.I.R., 161 Cr.P.C. statements of the P.Ws and other material collected by the I.O, *prima-facie*, there are no reasonable grounds for believing that applicants-accused have committed the alleged offence, but there are sufficient grounds for further enquiry into their guilt. Accordingly, instant criminal bail application is allowed and the applicants/accused are granted bail in the sum of Rs.100,000/- (Rupees One Hundred Thousands only) each and P.R. bonds in the like amount to the satisfaction of the learned Trial Court.

6. Needless to mention that the observations made hereinabove are tentative in nature and the Trial Court shall not be influenced by the same while deciding the case on merits in accordance with law.

  
Judge

  
9.5.2021  
Judge

