



Hanif and Zeeshan, both sons of Ghulam Hussain. It is alleged that personal search of both the accused was conducted. From search of accused Zeeshan, one 30 bore pistol without number along with magazine loaded with 2 bullets and one bullet in chamber and one hand grenade was recovered from his possession. Whereas, from possession of his brother Muhammad Hanif, it is alleged that one 30 bore pistol, without license and a hand grenade were recovered. On account of non-availability of private witnesses, ASI made police constables as mashirs and prepared mashirnama of arrest and recovery. Thereafter, both the accused and case property were brought to police station where aforesaid FIRs were registered against the accused persons.

3. After usual investigation, challan was submitted against the accused. Presently, the case is pending with learned Judge Anti-Terrorism Court-XIII, Karachi where it is stated that charge against the accused has been framed.

4. Bail applications were moved on behalf of the applicants/accused before the trial court, the same were dismissed vide order dated 27.09.2017. Thereafter, the applicants/accused approached this Court for the same relief.

5. Mr. Muhammad Ramzan Tabassum, learned counsel for the applicants/accused mainly contended that despite encounter with sophisticated weapons not a single injury was caused to either party. It is also argued that no private persons of the locality were associated to witness the recovery. It is further argued that it was the case of spy information, the police party reached at the place of incident at 2125 hours, after encounter mashirnama of arrest and recovery was prepared but the same time is mentioned in the mashirnama. According to the learned counsel for the applicants/accused it creates serious doubt in the prosecution case. It is argued that it was the night time incident, source of identification has not been disclosed. Lastly, it is argued that both the accused are brothers and they are victim of the police enmity and case against the accused requires further inquiry.

6. Mr. Muhammad Iqbal Awan, learned D.P.G. contended that both the accused were arrested immediately after the police encounter; unlicensed

pistols and hand grenades were recovered from the possession of the applicants/accused. He opposed the bail applications.

7. After hearing the learned counsel for the parties, we are inclined to grant bail to the applicants/accused for the reasons that despite encounter with sophisticated weapons none received injury from either side, even scratch was not caused. Not a single bullet hit the police mobile. Record reflects that on spy information police party proceeded to the pointed place of incident at 2125 hours, there was encounter, after encounter accused were arrested and mashirnama of arrest and recovery was prepared at the same time, which apparently is not possible. Both the accused are brothers. It is alleged that they are the victims of police enmity. It is settled principles of law that benefit of doubt will go to the accused even at the bail stage. Reliance is placed on the case of Syed AMANULLAH SHAH versus The STATE (PLD 1996 Supreme Court 241) in which the Honourable Supreme Court has observed as under:-

To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused.”

8. In view of the above, from the tentative assessment of the material available on record, we are of the considered view that *prima facie* case for grant of bail to the applicants/accused is made out. Concession of bail is extended to applicants/accused Muhammad Hanif and Zeeshan both sons of Ghulam Hussain, subject to their furnishing solvent surety in the sum of

Rs.50,000/- (rupees fifty thousand) *in each case* and P.R. bonds in the like amount to the satisfaction of the trial court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and the trial Court shall not be influenced by the same while deciding the case(s) of the applicants/accused on merits.

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*Gulsher/PS*