

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. B. A. No.1966 and 1967 of 2017

Date Order with signature(s) of Judge(s)

Present: *Mr. Justice Naimatullah Phulpoto*
 Mr. Justice Zulfiqar Ahmad Khan

Kashif Ansari S/o Zaheer Ahmedversus.....The State

ORDER

09.02.2018

Mr. Muhammad Akram Khan, advocate for applicants/accused
Mr. Muhammad Shahzad Anjum, Special Public Prosecutor

Applicant/accused Kashif Ansari son of Zaheer Ahmed has applied for post arrest bail in F.I.Rs. Nos.112/2017, under sections 353, 324, 34, PPC read with section 7 of the Anti-Terrorism Act, 1997 and 113/2017 under section 23(1)(a) of the Sindh Arms Act, 2013, registered at P.S. Supermarket, Karachi.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 25.04.2017, Naik Sher Hussain of Sachal Rangers, 41 Wing, Nazimabad, Karachi, lodged above F.I.Rs. at P.S. Supermarket on 25.04.2017 at 0300 hours, alleging therein that he was busy in patrolling where it is alleged that two persons were found coming in suspicious manner on motorcycle at 0150 hours, they were signaled to stop but they drew pistol and fired upon Rangers with intention to kill, Rangers officials also fired in self-defence. It is alleged that one fire hit to applicant/accused at his leg and he fell down. Both accused were caught hold. Due to noncooperation of private persons, personal search of both the accused was conducted in presence of Rangers officials. From possession of accused Kashif Ansari, one T.T. pistol 30 bore, without license was recovered and from accused Muhammad Junaid, who was driving the motorcycle at the time of incident mobile phone was recovered. F.I.R. No.112/2017 was recorded against both the accused at P.S. Supermarket for offence under sections 353, 324, 34, PPC read with section 7 of the Anti-Terrorism Act, 1997, whereas separate F.I.R. No.113/2017 was

recorded against accused Kashif Ansari under section 23(1)(a) of the Sindh Arms Act, 2013.

3. After usual investigation, challan was submitted against the accused before learned Judge, Anti-Terrorism Court. Case was transferred to learned Additional Sessions Judge-II/Anti-Terrorism Court, Central Karachi.

4. Bail applications were moved on behalf of both the accused. Concession of bail was extended to co-accused Junaid vide order 10.08.2017, however, bail to applicant/accused Kashif Ansari was refused on 11.11.2017. Thereafter, applicant/accused approached this Court for the same relief.

5. Mr. Muhammad Akram Khan, learned counsel for the applicant/accused, mainly contended that co-accused Junaid has already been granted bail and case of present applicant/accused is identical. It is contended that it is the case of half-fry and accused himself is the victim of the Rangers officials and he is in jail for about 8 months, yet trial is not concluded. Lastly, it is submitted that not a single injury has been attributed to the applicant/accused Kashif Ansari in the commission of offence.

6. Mr. Muhammad Shahzad Anjum, learned special public prosecutor opposed the bail application on the ground that accused was caught red handed at the spot in the injured condition, however, he admits that yet trial is not concluded and evidence of some witnesses is yet to be recorded by the trial court.

7. After hearing the learned counsel for the parties, we are inclined to grant bail to the applicant/accused for the reasons that no fire arm injury was caused by the applicant/accused to the Rangers officials at the time of incident. On the other hand, applicant/accused has sustained fire arm injury at the hands of Rangers officials. Plea has been raised that applicant/accused is victim of the Rangers officials. Co-accused Junaid has already been granted bail by the trial court. So far as the facts and circumstances of the case of the present applicant/accused are concerned, the same are identical to the case of co-accused. Applicant/accused is in custody for the last about 8 months, yet trial is not concluded. There are reasonable grounds that the

applicant/accused has not committed the alleged offence. Case of the applicant/accused requires further inquiry. 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 applicant/accused is made out. Concession of bail is extended to applicant/accused Kashif Ansari son of Zaheer Ahmed Ansari, subject to his furnishing solvent surety in the sum of Rs.100,000/- (rupees one hundred 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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