

**IN THE HIGH COURT OF SINDHCIRCUIT COURT,
LARKANA**

Cr. B.A. No.D-11 of 2017

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Adnan-ul-Karim Memon

Applicant : Sher Khan alias Bholi
S/o. Khuda Bux alias Allah Bux Bangulani,
through Mr. Faiz Muhammad Larak, Advocate

Respondent : The State,
through Mr. Khadim Hussain Khoharo, DPG.

Date of Hearing : 08.06.2017
Date of Order : 08.06.2017

ORDER

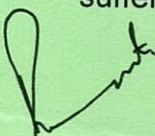
ZAFAR AHMED RAJPUT, J.- After rejection of his earlier bail application, vide order dated 27.04.2017, passed by the learned Special Judge Anti-Terrorism, Kashmore at Kandhkot in Cr. Bail Application No.14 of 2017, the applicant/accused Sher Khan alias Bholi has moved toward this Court seeking post-arrest bail in Crime No.40/2017, registered at Police Station Kashmore, under section 324, 353, 440, 402, 427, 34 P.P.C., 6/7 Anti-Terrorism Act.

2. Briefly stated, facts of the prosecution case are that on 17-03-2017, at 1740 hrs. ASI Mir Dost Solangi of P.S. Kashmore lodged the aforementioned F.I.R., on behalf of the State, alleging therein that on that day during course of patrolling along with his sub-ordinate staff he received spy information that three suspected persons were standing at Malik Laro with intention to commit any offence. On such information, he reached pointed place at 1740 hours, where they saw three persons present on the road, out of them two were armed with Kalashnikovs and one with T.T. Pistol, who noticing police party took the positions and started firing upon them; police also fired in retaliation, the



encounter lasted for ten minutes then present applicant/accused shouted that he received fire arm injury, he was apprehended and police took into possession one pistol lying near to him, while two other accused persons, out of them one was identified as Altaf Dashti, succeeded to make their escape good. Thereafter, police party brought the applicant/accused at police station where present F.I.R. was registered.

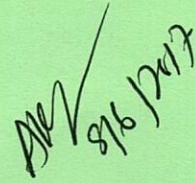
3. Heard the learned counsel for the applicant/ accused as well as learned D.P.G. for the State and also perused the material available on record.
4. Learned counsel for the applicant/accused has contended that the applicant has falsely been implicated in this case as no such encounter took place and in fact the applicant was taken by police from his house and, thereafter, police fired on his leg under a newly created term of police i.e. Half Fry and in order to legalize their such action, police concocted a falls story. He has further contended that even no circumstantial evidence is available with prosecution to prove alleged encounter, hence, it is a fit case of further enquiry.
5. On the other hand, the learned D.P.G. appearing for the State has opposed this bail application on the ground that the applicant/accused is involved in a case of assault on police officials in the execution of their public duty with such intention and knowledge that, if he by that act caused Qatl, he would be guilty of Qatl-e-amd. He further states that the complainant has no ill-will against the applicant to implicate him in this case.
6. The offences under Section 353 and 427 P.P.C. are bailable, while offences under Section 402 and 440 P.P.C. do not fall within the prohibitory clause of section 497 Cr. P.C. As per prosecution story the accused was arrested after an encounter but it is very astonishing that exchange of firing between accused and police party lasted for ten minutes in which only accused had suffered bullet injury on his leg and no one from police party even sustained any




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abrasion, Under the circumstances, it is yet to be determined as to whether the case of accused falls within the purview of Section 324 P.P.C and Section 6/7 Anti-Terrorism Act, 1997 or not, which is to be decided at the time of trial by the trial Court. Hence, we are of the view that the case of the accused calls for further enquiry as envisaged under sub-section (2) of Section 497 Cr. P.C.; therefore, he is admitted to bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) with P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the accused on merits. However, in case the accused misuse the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.


JUDGE


JUDGE