

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Applications Nos.1217 and 1218 of 2017

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

1. For orders on office objection as at Flat "A"
 2. For hearing of bail application
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04.10.2017

Mr. Ranjhan Khan Chandio, advocate for applicant
Mr. Muhammad Iqbal Awan, D.P.G. a/w PI/IO Ali Khan Sanjrani

Applicant/accused Syed Ahmed Hussain Salman seeks bail in FIR No.291/2016, registered at P.S. Zaman Town, Karachi East under sections 4/5 of the Explosive Substances Act, 1908 and section 23(1)(a) of the Sindh Arms Act, 2013.

2. Brief facts of the prosecution as disclosed in the F.I.R. are that F.I.R. No.291/2016 was lodged by Inspector Muhammad Hayyat Khan, alleging therein that applicant/accused Syed Ahmed Hussain Salman alias SP and Muhammad Abdullah Siddiqui alias Habib Kala were under arrest in F.I.R. No.127/2016 under sections 353, 324, 436, 34 PPC read with section 7 of the Anti-Terrorism Act, 1997 and under sections 3/4 of the Explosive Substances Act, 1908. It is stated that during investigation applicant/accused admitted that he had concealed one hand grenade at Itwar Bazar, Sector 43-A, Korangi No.3 ½, Karachi and voluntarily prepared to produce it. Police party took the applicant/accused to the pointed place. Accused led the police party and produced one hand grenade and one 30 bore pistol with 5 live bullets wrapped in a shopper from Sunday Bazar, the same were recovered in presence of mashirs. Mashirnama of recovery was prepared. Thereafter, accused and case property were brought to police station where case bearing Crime No.291/2006 under section 4/5 of the Explosive Substances Act, 1908 and section 23(1)(a) of the Sindh Arms Act, 2013 was registered against the accused on behalf of the State.

3. After usual investigation, challan was submitted against the accused in the aforesaid FIR.

4. Charge has been framed against the accused by learned Judge, Anti-Terrorism Court-V, Karachi in Special Cases Nos.1185/2016 and 1186/2016 arising out of F.I.R. No.291/2016 registered under sections 4/5 of the Explosive Substances Act, 1908 and section 23(1)(a) of the Sindh Arms Act, 2013.

5. Bail application was moved on behalf of applicant/accused before learned Judge, Anti-Terrorism Court-V, Karachi, the same was dismissed vide order dated 17.06.2017. Thereafter, the applicant/accused approached this Court for the same relief by filing separate bail applications.

6. During pendency of these two bail applications, progress report was called from the trial court. It is reported by learned Judge, Anti-Terrorism Court-V, Karachi that charge has been framed against the accused; case was fixed before the trial court on 12.09.2017 but PWs and IOs failed to appear before the trial court and the case was adjourned.

7. Learned advocate for the applicant/accused mainly contended that applicant/accused was picked up by the law enforcement agencies before registration of the cases and subsequently weapon and explosive substance have been foisted upon him. It is further argued that recovery of hand grenade on the pointation of the applicant/accused from Sunday Bazar was not from his exclusive possession. He has further contended that one year and five months have passed, yet not a single prosecution witness has been examined. Lastly, it is argued that bail cannot be refused to the applicant/accused as punishment.

8. Mr. Muhammad Iqbal Awan, learned D.P.G. opposed the bail applications on the ground that hand grenade and one 30 bore pistol with 5 live bullets were recovered on the pointation of the applicant/accused. He has further contended that delay has been caused by the accused in conclusion of trial.

9. We have carefully heard the learned counsel for the parties, perused the progress report of the trial court and other material available on record. In our considered view, a case for grant of bail to the applicant/accused is made out for the reasons that case was registered against the applicant/accused on 28.05.2016, yet not a single prosecution witness has been examined. Progress

report of the trial court is available on record, which reflects that prosecution has failed to produce the prosecution witnesses and IO before the trial court. It is also contended that recovery of hand grenade and one 30 bore pistol with 5 live bullets was from Sunday Bazar and it was not in exclusive possession of the applicant/accused. Prima facie, a case for grant of bail to the applicant/accused is made out, case against applicant/accused requires further inquiry. Concession of bail is extended to applicant/accused, subject to his furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the trial court.

10. Needless, to mention here that the observations made hereinabove are tentative in nature, the same would not influence the trial court while deciding the case of the applicant/accused on merits.

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Gulsher/PS