

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.1028 of 2017

Criminal Bail Application No.1029 of 2017

Criminal Bail Application No.1030 of 2017

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

For hearing of bail application

23.10.2017

Mr. Liaquat Ali Hamid, advocate for applicant
Mr. Muhammad Iqbal Awan, D.P.G.

Applicants/accused Rohail Saleem and Owais Akhtar seek post arrest bail in F.I.R. No.308/2016, under sections 353, 324, PPC read with section 7 of the Anti-Terrorism Act, 1997; and in FIRs Nos.310/2016 23(1)(a) of the Sindh Arms Act, 2013 registered against accused Rohail Saleem; and 311/2016 under section 23(1)(a) of the Sindh Arms Act, 2013, registered against accused Owais Akhtar, at P.S. Defence, Karachi South.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 17.07.2016, ASI Khalid Yaqoob of P.S. Defence Karachi left police station along with subordinate staff for patrolling. While patrolling on various places, when the police party reached opposite Behbood Center, Mehmoodabad, Karachi at 2245 hours, where it is alleged that accused persons appeared on two motor cycles from Mehmoodabad. Police found them in suspicious condition and signaled them to stop. It is alleged that accused sitting on rear seat started firing upon the police with intention to kill them. Police also fired in self defence. It is alleged that in the police encounter two accused persons sustained injuries and all the three accused were caught hold by the police at the spot. On inquiry, they disclosed their names as Shoaib Khan son of Abdul Ghaffar, Rohail Saleem son of Saleem Memon and Owais Akhtar son of Akhtar Hussain. From possession of Shoaib Khan, police recovered one 30 bore pistol with one live round in its chamber. From possession Rohail Saleem, police recovered one 9MM pistol, with loaded magazine containing two live rounds and from possession of accused Owais Akhtar, police recovered one 30 bore pistol with loaded magazine containing one live bullet.

Motorcycles were also recovered by the police, details of motorcycles are mentioned in the F.I.R. After arrest and recovery, mashirnama of arrest and recovery was prepared. Thereafter, accused and case properties were brought to the police station where aforesaid FIRs were registered against them. During investigation, place of wardat was inspected and from the place of wardat, 6 empties of SMG, 5 empties of 30 bore pistol and two empties of 9MM pistol were recovered. IO came to know that both the motorcycles were snatched from the jurisdiction of Jamshed Quarters and Defence police stations. On the conclusion of usual investigation, challan was submitted against the accused for offences under sections 353, 324, 34, PPC read section 7 of the Anti-Terrorism Act, 1997 and section 23(1)(a) of the Sindh Arms Act, 2013.

3. Bail applications were moved on behalf of applicants/accused in Special Cases Nos.146/2016, 147/2016, 148/2016 and 149/2016. Vide order dated 25.03.2017, bail applications were dismissed. Hence applicants/accused approached this Court for the same relief.

4. Learned counsel for the applicants/accused mainly contended that prosecution story appears to be unnatural and unbelievable. It is argued that according to the case of the prosecution, accused had fired with automatic weapons upon the police but not a single injury was caused to the police nor hit to the police vehicle. It is argued that in the fake police encounter, police caused firearm injuries to the accused persons. It is also argued that accused are no more required for investigation. In support of his contentions, learned counsel for the applicants/accused relied upon the case of MUMTAZ ALI versus THE STATE (2011 SCMR 70).

5. Mr. Muhammad Iqbal Awan, learned D.P.G. opposed the bail applications on the ground that accused were caught red handed at the spot and pistols were recovered from their possession.

6. After hearing the learned counsel for the parties, we are of the considered view that a case for grant of bail to the applicants/accused is made out for the reasons that there was police encounter at odd hours of night; despite firing by the accused with sophisticated weapons, not a single injury was caused to any of the police officials, even police mobile was not hit. It is

argued by the learned counsel for the applicants/accused that it was a fake police encounter and police have caused firearm injuries to the accused. Rightly reliance has been placed on the case of MUMTAZ ALI versus THE STATE (2011 SCMR 70). Relevant portion is reproduced as under:-

“5. Having heard the learned counsel for the parties and having reappraised the evidence with their assistance, we find that admittedly the occurrence took place at a public place and according to Muhammad Umar, SIP (P.W.1), he fired 45 shots in the alleged police encounter but surprisingly, neither during occurrence nor after the occurrence any one from public reached the spot. The statement of the other witness namely Akhtar Hussain, HC (P.W.2) does not improve the prosecution case in any manner and a bare reading of the same, would show that neither in his statement nor in that of P.W. 1 there is allegation that appellant fired at the police party. Their statements are to the effect that after the encounter they reached the spot and found a person lying dead, one decamped and appellant was lying injured. Although according to the prosecution, three accused fired at the police party but surprisingly no member of the police party was injured nor any bullet hit police vehicle. The consistent plea of the appellant during the trial was that there was exchange of firing between two parties and he got injured in the cross firing. There is nothing on record to indicate that this plea was ever investigated instead the complainant police officer himself investigated the case. The non-production of medical evidence particularly with regard to injury received by the appellant is a serious infirmity in the prosecution case as in absence of that it would not be free from doubt to hold that the appellant received the injury on account of firing by police party or those were caused by cross firing between the two parties. Even if the prosecution story is admitted to be true that there was firing from the side of the accused the possibility that it was the deceased Shafoo or the absconding accused who fired at the raiding party, could not be ruled out.

6. For what has been discussed above, we find that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt, to sustain conviction. Consequently, this appeal is allowed the impugned judgment is set aside and Mumtaz Ali-appellant be released from jail forthwith unless detained in any other case.”

7. It is a matter of record that medical evidence with regard to the injury received by the applicants/accused has not been shown and it is a serious infirmity in the prosecution case. Yet it is to be determined whether actually encounter has taken place or not.

8. For what has been discussed above, prima facie, case for grant of bail to applicants/accused is made out. Therefore, concession of bail is

extended to applicants/accused Rohail Saleem son of Saleem Memon and Owais Akhtar son of Akhtar Hussain, subject to their furnishing solvent surety in the sum of Rs.100,000/- (rupees one hundred thousand) **each** in each case, with P.R. bond 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, the same would not influence the trial court while deciding the case of the applicants/accused on merits.

J U D G E

J U D G E

Gulsber/PS