

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1342 of 2017
Criminal Bail Application No.1343 of 2017

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

For hearing of bail application

30.10.2017

Mr. Khawaja Muhammad Azeem, advocate for applicant
Mr. Muhammad Iqbal Awan, D.P.G.

Applicant/accused Ameen Nasir son of Muhammad Nasir seeks post arrest bail in F.I.R. No.147/2016, under sections 353, 324, 34 PPC read with section 7 of the Anti-Terrorism Act, 1997; and in F.I.R. No.148/2016, under section 23(1)(a) of the Sindh Arms Act, 2013 registered at P.S. North Nazimabad, Karachi.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 22.08.2016 at 2325 hours ASI Rab Dino left police station along with subordinate staff for patrolling. While patrolling, when the police party reached at Block-C, North Nazimabad, Karachi, where it is alleged that a Car bearing registration No.S-1881 appeared in which suspicious persons were sitting. Police signaled them to stop but they started firing upon the police, police also fired from the official weapons. Thereafter, car was stopped at some distance as its tie rod was broken. Three accused persons while firing upon the police ran away, however, police caught hold present accused lying in the injured condition. He had sustained injury at his leg. From his possession one 30 bore pistol/mouser was recovered, thereafter, accused and case property were brought to the police station where aforesaid FIRs were registered. After usual investigation, challan was submitted against 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 applicant/accused before learned Judge, Anti-Terrorism Court/ADJ-I, Karachi Central. Vide common order dated 16.08.2017, bail applications were dismissed. Hence applicant/accused approached this Court for the same relief.

4. Learned counsel for applicant/accused mainly contended that during encounter not a single injury was caused to police officials, even police mobile was not hit. It is also argued that it was a fake police encounter and blood was not found at the place of wardat. Lastly, it is argued that accused is behind bars for about 14 months, yet not a single prosecution witness has been examined by the prosecution. It is also argued that accused is no more required for investigation. In support of his contentions, learned counsel for applicant/accused relied upon the order passed by this Court in Cr. Bail Application No.1106/2017.

5. Mr. Muhammad Iqbal Awan, learned D.P.G., half-heartedly opposed the bail applications.

6. We are inclined to grant bail to the applicant/accused for the reasons that during cross-firing, not a single injury was caused to any of the police officials, even police mobile was not hit. According to the case of prosecution, applicant/accused had sustained firearm injury at his leg but no blood was found at the place of wardat. Genuineness of the encounter or otherwise in the circumstances is yet to be determined at trial. Accused is behind bars for about 14 months, it is stated that yet not a single witness has been examined by the prosecution. Case against applicant/accused requires further inquiry. Rightly reliance has been placed on the order passed by this Court in Cr. Bail Application No.1106/2017 (*Asgbar aka Dolu aka Arshad vs. the State*). Relevant portion is reproduced as under:-

“4. Having considered the submissions of learned counsel and A.P.G., it seems that prosecution story is based on stereotype police encounters in which usually accused persons received injuries and miraculously none from police party or general public received a scratch. During arguments, learned A.P.G. conceded that applicant is neither a previous convict nor ever indulged in similar activities entailing penal consequences. Nonetheless, police officials did not resort to the provisions of Section 5 of the Anti-Terrorism Act, 1997, a mandatory requirement in likewise incidents. Besides, the applicant has been in custody since 19.1.2017.

5. Consequently, as the alleged participation of the applicant in aforesaid crime requires further probe, he is granted bail subject to furnishing solvent surety in the sum of Rs.100,000/- (one hundred thousand) with P.R. bond in the like amount to the satisfaction of the trial court.”

7. For what has been discussed above, prima facie, case for grant of bail to applicant/accused is made out. Therefore, concession of bail is extended to applicant/accused Ameen Nasir son of Muhammad Nasir, subject to his furnishing solvent surety in the sum of Rs.100,000/- (*rupees one hundred thousand*) in each case, with P.R. bond in the like amount to the satisfaction of the trial Court.

8. 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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