

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. B. A. No.1253 of 2017

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

For hearing of bail application  
-----

**27.10.2017**

Mr. Kabir A. K. Ghouri, advocate for applicant  
Mr. Muhammad Iqbal Awan, D.P.G. a/w PI Zakaullah  
-----

Applicant/accused Sikandar alias KESC wala seeks post arrest bail in F.I.R. No.66/2012, registered at P.S. Napier under sections 147, 148, 149, 353, 324, 427 PPC read with section 3/4 of the Explosive Substances Act, 1908 and section 7 of the Anti-Terrorism Act, 1997.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 02.04.2012, SIP Allah Yar of P.S. Napier left police station along with subordinate staff for patrolling at 09:00 a.m. When police party reached at Chakiwara Road, near Kausar Petrol Pump, police officials came to know that 100/150 persons had assembled and they were raising slogans and they were armed with deadly weapons. They have blocked the traffic and were attempting to cause damage to the Government property. Police party proceeded to the pointed place where found accused armed with deadly weapons. Applicant/accused Sikandar alias KESC wala was also one of them. It is alleged that all the accused persons while seeing police party fired upon the police with intention to kill. Police also fired in self defence. It is alleged that in the cross-firing ASI Rabnawaz and two passerby received injuries. Damage was also caused to APC. F.I.R. of the incident was lodged in the above referred sections. After usual investigation, challan was submitted. Applicant/accused was shown as absconder. He was arrested on 18.11.2016.

2. Bail application was moved on behalf of the applicant/accused before learned Judge Anti-Terrorism Court-III, Karachi, the same was dismissed vide order dated 12.07.2017. Hence applicant/accused approached this Court for the same relief.

3. Learned counsel for the applicant/accused mainly contended that allegations against applicant/accused are general in nature. He was not

arrested at the spot. It is also argued that applicant/accused is victim of police enmity and a false case has been registered against him. It is contended that co-accused Muhammad Ayaz alias Bhabi has also been granted bail by the trial court and the case of the present applicant/accused is identical. In support of his contentions, learned counsel for the applicant/accused relied upon the case of MUMTAZ ALI versus THE STATE (2011 SCMR 70).

4. Mr. Muhammad Iqbal Awan, learned D.P.G. argued that name of the applicant/accused transpires in the F.I.R. and he was armed with deadly weapon. He has further argued that case of co-accused Muhammad Ayaz is distinguishable from the case of the applicant/accused and he has opposed the bail application.

5. We are inclined to grant bail to the applicant/accused on the ground that allegations are generalized in nature. Applicant/accused was not arrested from the place of wardat when the police party was armed with official arms and ammunitions. After arrest, nothing was recovered from the possession of applicant/accused. According to the case of the prosecution accused has been arrested on 18.11.2016, yet prosecution has not been able to examine a single witness. Case of co-accused more or less is identical to the case of the present applicant/accused. Case against accused requires further inquiry. 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.”

8. 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 Sikandar alias KESC wala son of Abu Bakar, subject to his furnishing solvent surety in the sum of Rs.200,000/- (rupees two hundred thousand), with P.R. bond in the like amount to the satisfaction of the trial Court.

6. 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

*Gulsher/PS*