

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1434 of 2017
Criminal Bail Application No.1435 of 2017

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

For hearing of bail application

27.10.2017

Ms. Azra Iqbal, advocate for applicant
Mr. Muhammad Iqbal Awan, D.P.G.

Applicant/accused Muhammad Rameez seeks post arrest bail in F.I.R. No.24/2017, under sections 353, 324, 34 PPC read with section 7 of the Anti-Terrorism Act, 1997; and in F.I.R. No.25/2017, under section 23(1)(a) of the Sindh Arms Act, 2013 registered at P.S. Liaquatabad, Karachi Central.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 09.02.2017, SIP Noor Ali of P.S. Liaquatabad left police station along with subordinate staff for patrolling. While patrolling on various places, when the police party reached opposite Azmat Nagar, Liaquatabad where it is alleged that at 0045 hours a motorcycle appeared on which two persons were sitting. Police officials signaled the suspicious persons to stop but they started firing on the police with intention to kill them. Police also filed in self defence. It is alleged that one accused person sustained injury and other person succeeded to run away. On inquiry, injured person disclosed his name as Muhammad Rameez son of Muhammad Raees. From his possession police recovered one 9MM pistol with loaded magazine containing two live rounds. Motorcycle was 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. 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 applicant/accused before learned IInd Additional Sessions Judge / Special Judge Anti-Terrorism Court,

Karachi Central. Vide order dated 10.08.2017, bail applications were dismissed. Hence applicant/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. It is also argued that ingredients of section 324, PPC are not satisfied as none of the police officials has sustained injury in the encounter. It is also argued medical officer, who examined the injured accused has not been shown as witness by the prosecution in the final report. It is also argued that accused is no more required for investigation. In support of his contentions, learned counsel for the applicant/accused relied upon the case of MUMTAZ ALI versus THE STATE (2011 SCMR 70).

5. Mr. Muhammad Iqbal Awan, learned D.P.G. argued that applicant/accused was arrested at the spot, however, he admitted that from the place of wardat bloodstained earth was not collected by the IO. He opposed the bail applications on the ground that accused was caught red handed at the spot and 9MM pistol was 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 applicant/accused that it was a fake police encounter and police have caused firearm injuries to the accused. It appears that ingredients of section 324, PPC are yet to be determined at trial. IO did not found any blood at the place of wardat. Medical officer, who examined injured accused has not been shown as a witness nor medical certificate is produced. 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.”

7. It is a matter of record that medical evidence with regard to the injury received by the applicant/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 applicant/accused is made out. Therefore, concession of bail is extended to applicant/accused Muhammad Rameez son of Muhammad Raees, 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.

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.

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