

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1112 of 2017
Criminal Bail Application No.1113 of 2017

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

For hearing of bail application

30.10.2017

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

Applicant/accused Rafiullah alias Arifullah son of Umer Khan seeks post arrest bail in F.I.R. No.209/2015, under sections 395, 353, 324, 34 PPC; and in F.I.R. No.210/2016, under section 23(1)(a) of the Sindh Arms Act, 2013 registered at P.S. PIB Colony, Karachi.

2. Brief facts of the prosecution case as disclosed in the F.I.R. are that on 09.09.2015 at 1045 hours one Sajid Ali son of Liaquat Ali appeared at police station and lodged his report, alleging therein that on 09.09.2015, complainant was going to Shahrah-e-Faisal for his official work. At 1745 hours, he reached at PIB Colony where it is alleged that six accused persons looted from him Rs.500/-, in the meanwhile, two police mobiles appeared. As accused were armed with pistols, police tried to catch hold of them, in the meanwhile applicant/accused fell down from his motorcycle and sustained injury at his head; he was carrying 30 bore pistol. Thereafter, there was cross-firing; co-accused succeeded to run away. However, police caught hold present applicant/accused. On inquiry, he disclosed his name as Rafiullah alias Arifullah son of Umer Khan. Personal search of accused was conducted. One 30 bore pistol was recovered from his possession and from the fold of his shalwar, 100 plastic bags were recovered, which contained 460 grams charas. Accused disclosed the names of the co-accused, who ran away. F.I.R. for the incident was lodged under the above referred sections. ASI Muhammad Akhtar lodged F.I.R. against applicant/accused on behalf of the State under section 23(1)(a) of the Sindh Arms Act, 2013. After usual investigation, challan was submitted against accused for offences under sections 395, 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-II, Karachi East. Vide common order dated 13.07.2017, bail applications were dismissed. Hence applicant/accused approached this Court for the same relief.

4. Learned counsel for applicant/accused mainly contended that despite cross-firing, not a single injury was caused to complainant Sajid Ali or any of the police officials; even police mobile was not hit during police encounter. It is also argued that police had caused injury to the applicant/accused at his head. It is also contended that applicant/accused is in jail for about more than two years, yet not a single witness has been examined by the prosecution. Lastly, it is contended that cases have been registered against the applicant/accused by the police due to enmity. 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., submits that applicant/accused was caught red handed at the spot. Pistol was recovered from his possession. He opposed the bail applications.

6. After hearing the learned counsel for the parties, we are inclined to grant bail to the applicant/accused in the aforesaid crimes for the reasons that cash of Rs.500/- snatched from complainant Sajid Ali as alleged by the prosecution was not recovered from possession of applicant/accused. According to the case of the prosecution, there was cross-firing but not a single injury or scratch was caused to any of the police officials so also to complainant Sajid Ali. According to the case of the prosecution, accused had sustained injury at his head by falling down from his motorcycle but at the place of wardat, blood was not found. Mashirnama of place of wardat reflects that 10 empties of 30 bore, 6 empties of SMG were recovered, so far as police encounter is concerned, it is yet to be determined at trial. There is no medical certificate regarding the injury sustained by the applicant/accused. Accused is behind bars for about more than two years, it is stated that yet not a single witness has been examined by the prosecution. Rightly reliance has been placed on the order passed by this Court in Cr. Bail Application

No.1106/2017 (*Asghar 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 against applicant/accused requires further inquiry. Therefore, concession of bail is extended to applicant/accused Rafiullah alias Arifullah son of Umer Khan, 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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