

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
Cr. Misc. Appl. No. S- 108 of 2015
Cr. Bail Appl. No. S- 656 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
22.01.2016	

Mr. Muhammad Hanif Qureshi, Advocate a/w applicant
Syed Meeral Shah Bukhkari, D.P.G.
Mr. Ayaz Ali Gopang, Advocate for Respondents

MUHAMMAD IQBAL KALHORO, J.- Applicant is accused in FIR No. 06 of 2014 registered on 18.4.2014 at police station Ali Abad district Shaheed Benazirabad by the complainant Imam Din son of Misal Jan Shinwari Pathan. The allegations against him are that he along with co-accused forcibly on the show of weapons robbed oil from the petrol pump of the complainant on 3.4.2014. The applicant has filed this application for quashment of the proceedings pending before the learned 1st Additional Sessions Judge, Shaheed Benazirabad in above crime and offence. His ground is that he has been falsely implicated in this case by the complainant with whom he has a dispute over some money. His next ground is that there is documentary evidence in the shape of call data record and tracker record which show that neither the applicant was present at the spot at the relevant time nor the trailers in which alleged oil was poured forcibly were present at the spot at the time of incident. His next ground is that the inquiry of this matter was entrusted to SDPO Cant, Hyderabad who in his report has recommended a departmental action against the Investigating Officer of the case by noting that he did not properly investigate the matter. In addition to above, he states that the complainant has tried to convert a civil dispute into criminal case by registering the FIR against him.

Learned counsel for applicant has reiterated the above facts in his arguments and in support of his case, he has relied upon the decisions reported as 2013 YLR 2716, PLD

2013 S.C. 401, 2015 P.Cr.L.J 1329, 2015 PTD 349, PLD 2010 S.C. 585, 1975 P.Cr.L.J 120, NLR 1999 Cr. 140, 2006 YLR 15, 2007 SCMR 330 and 2014 SCMR 474.

Mr. Ayaz Ali Gopang, appearing for the complainant states that the entire case has been completed. The evidences of all the P.Ws including the complainant have been recorded by the trial court and the matter is likely to be concluded in near future. He also states that even the examination in chief of the Investigating Officer, who is the last witness, has been recorded and the matter is now fixed for his cross examination. He next contends that the points raised by the applicant here are factual in nature which can only be decided by appreciating the evidence. His case is that on these grounds proceedings of the trial cannot be quashed.

Syed Meeral Shah Bukhkari, D.P.G. has also opposed this application and has suggested that the trial court may be directed to conclude the trial within certain period. Regarding pre-arrest bail of the applicant, he has recorded no objection.

I have considered the arguments of the parties and have perused the material available on record including the decisions cited by the counsel for the applicant at the bar.

The applicant has based his case on certain documents viz. Call data record, tracker record and inquiry report and pleads his innocence. Any record showing his presence somewhere else from the place of incident is essentially a factual aspect of the case. This aspect can only be appreciated in the trial. Merely by looking at certain documents, the veracity of which is to be determined yet, the innocence or otherwise of the applicant cannot be determined. After the investigation, cognizance of the offence has been taken and the matter is pending before the competent court of law, which has already recorded almost the entire evidence, therefore, at this stage, any findings qua the innocence or otherwise of the applicant would amount to bypassing the evidence recorded in the trial. In my view, such recourse is not in line with the scheme of law. It is for the trial court to decide all these points. In the facts and circumstances, the enquiry report has no relevancy and cannot be considered. The Cr. Misc. Application has no merits and is accordingly dismissed.

I have also been informed that during pendency of this application, the applicant had filed an application under Section 265-K Cr.P.C. for his acquittal but that was dismissed vide order dated 9.9.2015. Against that order, the applicant has not sought any remedy. That suggests that to the extent the findings in that application recorded by the trial court are concerned, he is not aggrieved.

In so far as pre-arrest bail of the applicant is, learned DPG has recorded his no objection by stating that his bail application before the trial court was dismissed merely due to his absence and on merits he was granted bail by the trial court. Admittedly these merits have not been altered. The applicant is pursuing the legal remedies and is appearing before this court in above applications continuously. The trial is at the verge of conclusion. In these circumstances, I confirm his bail on the same terms and conditions as are mentioned in the order dated 5.6.2015.

In view of above I dispose of both the above applications, however, direct the trial court to conclude the trial within a period of one month from today and submit its compliance report. No adjournment unless any cogent or convincing ground is made shall be granted to either party.

JUDGE