

Cr.B.A.No.934 of 2012.

Cr.B.A.No.02 of 2013.

For Hearing:

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02.05.2013. Mr.Nizamuddin Baluch advocate for Applicant Abdul Latif Gopang in Cr.B.A.No: 934, of 2012.

Mr.Safdar Ali Bhutto advocate for Applicant Mour Shaikh in Cr.B.A.No.02 of 2013.

Mr.Syed Sardar Ali Shah Rizvi, APG for the State.

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SALAHUDDIN PANHWAR,J- We would like to dispose of above captioned applications by this common order as the same arise out of one and same FIR.

2. Applicants Abdul Latif Gopang and Mour Shaikh seek post arrest bail in Crime No.05/2012 of Police Station, Sadique Kalhoro under Section 302, 364, 404, 324, 353, 120-B, PPC.

3. Relevant facts are that it is alleged that SSP Naushahro Feroze vide his order No.RDR/ - 752 dated 30.01.2012 constituted a joint investigation team in respect of the abduction of foreigners Mr.Tom and his driver Gada Hussain Memon in Crime No.13/2012 under Section 365-A, PPC registered at Police Station, Bhiria City. Complainant being member of said team on spy information in respect of presence of both the said abductees including other kidnapes, who were under confinement at the Camp of Shamoon Shaikh in District

Khairpur proceeded towards the pointed place. They with the guidance of private persons/spy informers namely Soobal Malah and Gul Muhammad Malah reached in Keti Mumtaz near village Shamoon Shaikh, where they saw and identified accused namely Shamoon Shaikh, Ali Gohar alias Gohar Shaikh, Azizullah Shaikh, Qurban Shaikh, Zameer Shaikh, Imtiaz Shaikh, Pervez Shaikh all three armed with Kalashinkovs whereas Ghulam Shabeer with G-3 Rifle, Mumtaz alias Mumtoo with Kalashinkov, Ranjhan alias Ranjhoo Shaikh with Kalashinkov, Usman Shaikh, Ismail Shaikh and Lateef Gopang (present applicant) armed with Kalashinkov alongwith 5/6 other unidentified accused persons standing there. All the accused persons encountered with Police Party and caused fire shots with intention to kill them; in retaliation, the Police Party also made firing. Such encounter continued for about one hour. During encounter both spy informers namely Soobal Malah and Gul Muhammad Malah and PC Bashir Ahmed were over-powered by the accused persons and they were forcibly kidnapped away with intention to commit their murder and they were taken away by the accused persons towards Camp of dacoit Nazroo Narejo. It is further alleged that complainant came to know that dacoit Nazroo Narejo, Mushtaque alias Mushtoo Narejo, BAhadur alias Bajoo Narejo and Pathan Narejo with G-3 rifles, Khan Muhammad alias Ghoru Narejo, Shah Nawaz Narejo and Sobal Narejo with Kalashinkov have committed the murders of all the three abductees and have thrown their dead-bodies at Burera Pattan. Thereafter the complainant alongwith team of SSP Naushahro Feroze went there and found the dead-bodies of PC Bashir Ahmed and two informers namely Soobal Malah and Gul Muhammad Malah having sustained fire arm injuries. Thereafter the complainant lodged FIR and after usual investigation the SIO submitted challan against the accused persons before the concerned Court.

4. Learned counsel for applicant Abdul Latif Gopang, inter alia, contended that during the investigation, the applicant was found innocent thereby, his name was placed in column – 2; during the pendency of case, complainant filed an application under Section 193, CR.P.C and without hearing the applicant, he was joined as accused and was sent to prison. In fact in the instant case, applicant has been booked due to enmity with police as brother of accused namely Aziz Gopang was murdered by the police by showing fake encounter and the mother of the present applicant had lodged FIR bearing Crime No.33/2012 under Section 365-A, 302, PPC against the police officials; hence the police officials were annoyed, therefore they implicated him falsely in the instant case. Instant case falls within the scope of further enquiry thereby the applicant is entitled for post arrest bail.

5. Learned counsel appearing for applicant Mour Shaikh argued that the name of applicant, does not transpire in FIR and he was implicated on further statement, therefore he is entitled for bail. He has relied upon the case of Abid Ali v The State (2011 SCMR 161).

6. Conversely, learned APG for the State argued that the applicant Abdul Latif Gopang is booked in an heinous case of abduction and ransom; police report whereby the applicant was declared innocent, is not binding upon the Court when it is categorically mentioned in the instant FIR that applicant armed with Kalashnikov, was available and participated in encounter, therefore, he is not entitled for bail.

7. After careful consideration of the contentions raised by the learned counsel for the respective parties and meticulous examination of the available record, it is manifest that name of applicant Mour Shaikh, does not transpire in instant FIR and his name was disclosed by complainant in belated further

statement. We are fortified with the dictum of honourable Supreme Court in case of *Abid Ali v The State* reported in 2011 SCMR 161, wherein, it is held:

*“It is also settled principle of law that ipse dixit of the police is not binding on the court. This proposition is also supported by Manzoor’s case (PLD 1972 SC 81). It may also be observed that even for purposes of bail, law is not to be stretched in favour of the prosecution as law laid down by this Court in Amir v. The State (PLD 1972 SC 277). It is an admitted fact that name of the petitioner is not mentioned in the F.I.R. but his name was included in the list of accused in supplementary statement. There is no explanation available in this regard, therefore, the case of the petitioner falls under the category of further inquiry, See Tahir Abbas v. The State (2003 SCMR 426). Although the challan has been submitted in the Court and the case was fixed for hearing but still prima facie the case of the petitioner appears to be one of further inquiry and is covered under provisions of section 497 Cr.P.C., then it becomes a right of accused that he be released on bail and practice of refusal in such cases where challan is submitted should not be bar to refuse a right. See Muhammad Ismail v. Muhammad Rafique and another (PLD 1989 SC 585). It is also settled principle of law that observations made by superior courts dealing with the bail matter are always tentative in nature”.*

8. It is not disputed that applicant Abdul Latif Gopang was declared innocent by the investigating officer and he was joined by the trial Court on an application moved by complainant under Section 193 Cr.P.C and it is further revealed that previously the brother of applicant Abdul Latif Gopang was murdered in an alleged encounter and such FIR bearing Crime No.33 of 2012 was registered against the police officials by his mother.

9. We are in agreement with the contentions of learned APG that this is a heinous case, wherein, three persons have lost their lives but we are also conscious of the law that it is a settled proposition of law that merely heinousness of the case is not sufficient to put a person behind the bar for an indefinite period and it is the duty of the Court to examine the material available

on record and if through examination it is surfaced that the case of applicant falls within the purview of Sub-section (2) of Section 497, Cr.P.C, bail can be granted and cannot be withheld as punishment.

10. Keeping in view the above factual and legal position, when admittedly the applicant Abdul Latif Gopang was found innocent during investigation and enmity with police officials is patent in the instant matter and as regard to the applicant Mour Shaikh, it is evident in FIR that his name is not available but he was booked due to further statement, hence it is settled principle of law that further statement cannot be equated with FIR and it has no such evidentiary value as laid down by the Honourable Supreme Court in the case of Abid Ali v The State (2011 SCMR 161), therefore, we are of the considered view that both the applicants have succeeded to bring their case within the scope of further enquiry, thus they are entitled for grant of post arrest bail.

11. Regarding dismissal of bail application of co-accused Ismail Shaikh by this Court, it is pertinent to say that he was police personnel and his name with specific role was available in FIR as well as statement under Section 161 Cr.P.C, therefore, case of applicants is not falling within the same category and is not identical to the case of present applicants.

12. Above are the reasons of our short order dated 02.05.2013 whereby the applicants were granted post-arrest bail.

JUDGE

JUDGE

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