

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-1266 of 2014

Date of hearing: 29-12-2014.

Date of decision: 29-12-2014.

Applicant: Through Mr. Sikandar A.Kolachi, advocate.

Respondent: The State through Mr. Mushtaque Ahmed Abbasi, D.D.P.P.

ORDER

MUHAMMAD IOBAL KALHORO, J: - The applicant through the instant bail application seeks post arrest bail in crime No.16 of 2014, under section 23(i)-A of Sindh Arms Act, 2013.

2. According to the prosecution case, on 23-07-2014 SIP Muhammad Hassan Rahimoon of PS Ghulam Nabi Shah, District Umerkot lodged an FIR alleging therein that on the said date he received spy information that three persons duly armed with weapons were trying to stop the vehicles at Wanhioon More (curve) with intention to commit dacoity or some other offence. Thereupon he along with police party reached there and saw three persons known as Saleem with repeater, Nabi Bux and Rasool Bux with pistols. On seeing police party they started firing upon them and police also retaliated. In the meantime, police came close to the accused Rasool Bux

for apprehending him, but the accused Saleem @ Muno made straight fire from repeater upon them, they however could save themselves by ducking down on the ground resultantly the bullet / the cartridge hit their own companion Rasool Bux on his right elbow and right thigh. Thereafter police party apprehended them and recovered the alleged weapon viz. Repeater with three live cartridges from the accused Saleem and one pistol from the accused Noor Nabi. After the arrest of the accused, weapons and ammunition recovered from them as detailed above were brought at Police Station where an FIR No.15/2014 under sections 398, 324, 353 and 34 PPC was registered. However, for possessing the un-licensed repeater, a separate FIR bearing No.16/2014, under section 23(i)-A of Sindh Arms Act, 2013 was registered against the applicant.

3. Learned counsel for the applicant contends that applicant is innocent and has been falsely implicated in this case; despite spy information in advance no efforts were made by the police to procure attendance of private persons to witness the alleged recovery; neither the weapon was sealed at spot nor it was sent to the Ballistic Expert for its examination; the applicant is behind the bars for the last more than five months during which no progress has been made in the trial; investigation is complete and the applicant is no more required for further inquiry; the main case bearing crime No.15/2014, under section 398, 324, 353 and 34 PPC the applicant

has already been granted bail by this Court vide order dated 31-10-2014.

He lastly prayed for the grant of bail.

4. On the contrary, the learned D.D.P.P appearing for the State has opposed the grant of bail to the applicant by submitting that an un-licensed weapon was recovered from him for which he could not produce any license. He, however, conceded that in the main case the applicant has been admitted to bail by this Court.

5. I have given my due attention to the contentions raised by the learned counsel for the respective parties and have gone through the material available on the record.

6. The prosecution story reflects that after an alleged encounter, the applicant was arrested and from him an un-licensed repeater along with three cartridges was recovered in presence of mashirs who were taken from the police party, notwithstanding the fact the police had an advance information about the presence of the applicant. The record does not show that the alleged repeater and cartridges were sealed at the spot for the purpose of sending them to the Ballistic Expert to examine their functionality. Despite the fact, the police acted against the applicant on the tip off received in advance and recovered the alleged repeater from his possession, however, the prosecution case is silent regarding any effort made by the police to obtain attendance of private persons to witness the

recovery proceedings, such failure on the part of police has, *prima facie*, made case against the applicant to be one of further inquiry. The applicant, admittedly, is behind the bars since the date of his arrest viz. 23-07-2014 and yet no progress has been made in the trial, although, the witnesses cited by the prosecution are police officials whose attendance could be procured without any delay. The fact that the applicant has been granted bail in the main case falling under sections 398, 324, 353 and 34 PPC by this Court vide order dated 31-10-2014, cannot be lost sight of and would be considered as a circumstances favouring the applicant for the purpose of granting him bail in the present case. After completion of investigation, the applicant is no more required for further inquiry and his remaining in Jail would not improve the case of the prosecution set up against him. In the circumstances, the applicant is granted bail subject to his furnishing a solvent surety in the sum of Rs.50,000/- (Fifty thousands) and PR Bond in the like amount, to the satisfaction of trial Court.

7. Needless to state that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party before the trial Court.

Criminal bail application stands disposed of.

JUDGE