

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-693 of 2017

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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FOR HEARING.

11.09.2017.

Mr.Aijaz Chandio, Advocate for applicant.
Syed Meeral Shah Bukhari, Additional P.G.

ORDER

ABDUL MALIK GADDI, J:- Having remained un-successful in obtaining his release on bail from the Trial Court in Crime No.109 of 2017 registered at P.S Phulleli, Hyderabad, for offences under Section 324, 353, 34 PPC. Now the applicant/accused namely *Nek Muhammad alias Neku alias Aijaz S/o Ameer Bux*, is seeking his release on bail through the instant bail application.

2. Necessary facts of the prosecution case as per FIR are that on 25.07.2017 at 2300 hours, the complainant SIP Ghulam Rabbani alongwith his subordinate staff were on patrolling in a government vehicle. During patrolling, they received spy information that a person Neko Bhatti alongwith his companions namely Ghulam Muhammad Paryar and Anwer Abro are present at Islamabad Chowk via Tando Agha and Ghas Mandi Chowk. On such information, the complainant party reached at the pointed place, where they saw the said accused persons on a motorcycle, when suddenly accused Neko Bhatti sitting on the rear side of motorcycle along with his fellows seeing the police party made straight firing upon. The complainant party in defence also made straight firing upon the accused persons and consequently accused Neko Bhatti fell down on the ground and he was apprehended alongwith pistol with two live bullets in its magazine and one bullet in its chamber without license, while other two accused persons made their escape good. On inquiry, apprehended accused disclosed his name as Neko Bhatti, who also disclosed the names of absconders as Ghulam Muhammad Parhiyar and Anwar Abro. Thereafter, the accused was arrested at the spot and such memorandum of arrest and recovery was

prepared in presence of mashirs namely PC Jawaid Iqbal and PC Juma Khan, who led injured Neko Bhatti to the Hospital for treatment. After completing all the formalities the complainant party reached at Police Station where the present FIR was lodged against the accused.

3. Learned Counsel for the applicant/accused vehemently argued that the applicant/accused is innocent and he has been falsely implicated in this case with ulterior motives on the part of the police officials. He further argued that nothing was recovered from the possession of the applicant/accused and the pistol mentioned in the FIR was foisted upon him. There are general allegations leveled against the applicant/accused and that there is violation of Section 103 Cr.P.C to the effect that the place of incident is a populated area but no independent and respectable person from the locality has been associated as private mashir to witness the incident as well as recovery proceedings. Learned Counsel also submits that despite the encounter between the applicant/accused and the police officials, but none from the police party received any injury, as such, Section 324 does not attract in such circumstances. He also argued that all the witnesses are police officials, who are interested being subordinate of the complainant. He further submits that no any specific role or over act has been assigned to the applicant/accused in the FIR.

4. Learned Deputy Prosecutor General has vehemently opposed this bail application on the ground that the accused has been nominated in the FIR with specific allegation and during the incident he received injuries and from his possession one pistol with live bullets was recovered. It is also stated that the applicant/accused is involved in so many criminal cases and he is hardened and dangerous criminal, therefore, he is not entitled for grant of bail.

5. I have given my anxious thoughts to the contentions raised at bar and have gone through the case papers so available before me.

6. It appears from the record that the alleged incident took place at Islamabad Chowk via Tando Agha and Ghas Mandi Chowk, which is stated to be a populated area and despite spy information no independent person from the place of incident has been associated as

mashir to witness the incident and that no plausible explanation has been furnished by the complainant party as to why they did not accompany any independent/private witness from the place of incident, which is clear violation of Section 103 Cr.P.C, therefore, at this stage the matter is of further inquiry, which comes within the ambit of Section 497 Cr.P.C. The whole case of the prosecution rests upon the evidence of the police officials, therefore, no question does arise for tampering of their evidence at the hands of the applicant/accused, therefore, the evidence of the police officials is required to be minutely scrutinized at the time of trial, whether the offence as alleged in the F.I.R is committed by the applicant/accused in a fashion as narrated by the complainant or otherwise. It is admitted position that the encounter had taken place for a considerable time but it is very surprising that none of the police officials received any injury during the said encounter, therefore, false implication of the applicant/accused in this case cannot be ruled out. It appears from the record that this applicant/accused was released on bail vide release writ dated 25.07.2017 in Crime No.81 of 2014, therefore, it is yet to be determined by the Trial Court that on the said date how the subject encounter took place. Furthermore, the weapon recovered from the applicant/accused was not sent to the ballistic expert, whether it was functional and used at the time of occurrence or otherwise, is yet to be determined at the trial, therefore, the prosecution story at this stage cannot be relied upon. It is stated by learned A.P.G that the applicant/accused is involved in so many criminal cases and he is hardened and dangerous criminal, therefore, he is not entitled for grant of bail. Reverting to the contention raised at bar, it is suffice to say that mere pendency of criminal cases against the accused does not *ipso facto* advance the case of the prosecution unless those have been ended into conviction up to the level of superior courts. Nothing has been brought on record by learned A.P.G that the applicant/accused has been convicted in any criminal case. In such situation, the argument of the learned A.P.G has no force at all. The challan has been submitted against the applicant/accused before the competent Court of law and he is no more required for further investigation.

7. In view of what has been discussed above, I am satisfied that on the basis of facts and circumstances of the case, the applicant/accused has succeeded in making out a reasonable case for grant of bail. I, therefore, admit the applicant/accused on bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and P.R Bond in the like amount to the satisfaction of the Trial Court.

8. Needless to mention that the observations made in this bail order are tentative in nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of.

JUDGE

Shahid