

in - Accused in lockup at time of incident
Not for reporting

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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Cr.B.A. No.1444 of 2015

Karam Hussain
V.
The State.

Date of hearing:	04.03.2016
Date of Order:	08.04.2016
Applicant:	Through Mr. Zakir Hussain Bughio, advocate for the applicant.
Respondents:	Through Mr. Saleem Akhtar Buriro, APG a/w SIP/IO Fayaz Qureshi, PS Mominabad, PI Aurangzed Jadoon, PHQ, Ajmer Nagri, PI Najamuddin, PS Orangi Town.

ORDER

Mohammed Karim Khan Agha, J.- The Applicant/accused has moved bail application under Section 497 Cr.P.C. read with Section 21-D of Anti-Terrorism Act, 1997 in FIR No.135 of 2015 under Section 353,324,34 PPC & 7 ATA, lodged at P.S. Iqbal Market. Earlier the bail application in Special Case No.B-839 of 2015 was dismissed on 3.10.2015 by the learned Anti-Terrorism Court No.II, Karachi.

2. The brief facts of the prosecution case are that complainant ASI Muhammad Afzal lodged FIR No.135/2015 u/s 353/324/34 PPC stating therein that on 23.7.2015 at about 2330 hours he received information by wireless from 15 that some dacoits are present in Chisti Nagar, Orangi Town, Sector 11/1-2, Ice Depot Street; the caller name was Imran having phone number 03132264031. Therefore, he alongwith police party in Government vehicle and in motorbike escort reached at the pointed place, where car riders armed with weapons, on seeing the police party started firing at the police party in order to kill them. Whereupon, PC Muhammad Iqbal, who was on motorbike had received bullet injury on his knee, whereas PC Muhammad Naeem also received bullet injury on his left thigh, both the police constables were on motorbike got injured. ASI had ordered to fire back, whereafter the accused persons succeeded to escape. One lady Gulfishan @

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Guriya w/o deceased Iftikhar Ahmed informed the police that the persons, who were in the car, who had fired were her brother-in-law namely Riaz S/o Karam Hussain and Fayaz and Ijaz both sons of Karam Hussain and Karam Hussain himself had come to kill her sister Darakshan @ Ayesha and seeing the police party had escaped away from the crime scene. Hence, the case u/s 353/324/34 PPC & 7 ATA was registered against them. On 25.7.2015, SI was investigating the case when nominated accused Karam Hussain had come to the PS himself, who was arrested by SHO and the other accused persons could not be arrested. From the place of incident empties of 9-MM pistol were recovered.

3. Learned counsel for the applicant/accused argued that the applicant is innocent and has been falsely implicated in this false and fabricated FIR, which is misconceived, concocted and not believable at all; prior to lodging the FIR, SHO, PS Iqbal Market illegally detained (i) Mst. Gulfishan (ii) Darakshan (iii) Amanta (iv) Shayan (v) Nargis Khatoon (vi) Shama and (vii) Rabab including present applicant/accused namely Karam Hussain on 23rd July, 2015 at about 09:00 a.m. Resultantly, an application u/s 491 Cr.P.C. was filed before the Honourable Sessions Judge (West) Karachi bearing Cr. Misc. Application No.680/2015 and on the directions of the Sessions Judge (West) Karachi, the Judicial Magistrate raided at the Police Station Iqbal Market, wherefrom the above named detainees, who were illegally detained by the police were recovered; so far as the last contents of FIR are concerned, according to the verbatim of the police that Gulfishan had disclosed the names of the culprits including Karam Hussain as such she has already been detained by the police illegally and recovered through the raid by the Judicial Magistrate, who also recorded their statements, wherefrom it is also clear that no such alleged incident took place; the present applicant/accused is an aged person and he has no previous criminal record and unable to do any such illegal act, but the SHO of PS Iqbal Market had demanded Rs.1,500,000/- (rupees fifteen lacs) for release of all the detainees, which he could not pay in time and consequently booked in this false FIR; in the contents of the FIR malafide intention of the Police is very much clear that an old aged person having age of 65 years and his three sons have been nominated in the FIR, how could they jointly commit such a crime and entire

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family members were detained by the SHO; that so far as the contents of the FIR by the police as alleged that Gulfishan disclosed that the present applicant/accused alongwith his sons came to murder her sister namely Darakshan @ Aisha, but there is no dispute between Gulfishan and all the family members, such false story has been managed by the SHO of PS Iqbal Market just to take revenge and to teach a lesson to the applicant/accused for not fulfilling his illegal demands of gratification; there is no independent eye witness of the alleged incident; the complainant also failed to describe the specific "ROLE" of the accused persons, hence the case becomes doubtful and requires further inquiry and the applicant/accused is entitled for concession of bail, and it is further submitted that the complainant, who is a police official made out this false and fabricated case upon the present applicant/accused with leveling false allegations; the Section 324, PPC is not applicable in the present case, because neither the accused person nor the police party as well as the complainant sustained any bullet injury, which shows that the matter is "INEFFECTIVE FIRING", whereas section 353, PPC is bailable, hence the applicant/accused is entitled for concession of bail; according to FIR exchange of firing was alleged, but not any person was received injury, hence without any injuries this case is not falls u/s 324, PPC. Learned counsel for the applicant/accused has relied upon the case law reported as 2009 P.Cr.L.J. Karachi 679, 2004 P.Cr.L.J. Karachi 1347 and 1996 P.Cr.L.J. Karachi 1573 while arguing that in the similar situation High Court of Sindh has released the accused on bail; the accused has been remanded to Judicial Custody and is no more required for further investigation and the challan has already been submitted in the concerned Court.

4. On the other hand, learned APG emphatically supported the impugned bail order passed on 03.10.2015, by the learned Anti-Terrorism Court No.II, Karachi whereby the bail of the applicant was declined and further submitted that the applicant is not entitled for the concession of bail especially as police officers sustained injuries during the encounter.

5. We have considered the contentions made by learned counsel for the applicant and the State and perused the record.

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6. As per settled law we have only made a tentative assessment of the material placed before us in making this order, which shall not prejudice the case of either party at trial, which shall be decided on merits based on the evidence before it by the trial court.

7. It would seem from the record that an application was made under Section 491 Cr.PC by Ms Sabah wife of Zafar Khan on 25-7-2015 in the Court of District and Sessions Judge Karachi West directing SHO Market Iqbal to produce the detainees listed below who had allegedly been taken illegally into police custody at 9pm on 23-7-2015 from their home. The detainees mentioned in the application were: 1. Mst. Darakhshan D/o Mithoo Khan, 2. Gul Afshan D/o Mithoo Khan, 3. Anamta D/o Iftikhar Ahmed aged about 5 years, 4. Shayan S/o Iftikhar Ahmed-3 years, 5. Nargis Khatoon W/o Mithoo Khan, 6. Shama D/o Karam Hasan, 7. Rubab and 8. Karam Hussain.

8. Pursuant to this application it appears that VII Civil Judge & Judicial Magistrate Karachi West raided PS Iqbal Market on 25-7-2015 where according to the application the detainees were being illegally held and as per his report to the Hon'ble District and Sessions Judge Karachi West dated 27-07-2015 during his raid he found all detainees present in one room in the PS including Ms Gul Afshan and her sister Darakhshan. He arranged for the release of all the detainees except the applicant who had apparently already been booked in the FIR in which he is currently standing trial. Significantly the VII Civil Judge & Judicial Magistrate Karachi West left the PS at 5.25 pm but according to the memo of arrest the applicant was arrested at 5.30 pm which indicates that the applicant was arrested 5 minutes after the magistrate left despite already being booked in the FIR and being in the police custody most of the day. No recovery was made from the applicant. No Identification parade was conducted and it seems curious that a large number of the applicants relatives were illegally confined with the applicant at the time of the raid on the PS including Ms Gul Afshan who had allegedly been maltreated in police custody during her illegal confinement as per her statement and had given a S.161 statement against the applicant. The only evidence against the applicant seems to be that of Ms Gul Afshan who was apparently an eye witness however the incident took place late at night which

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would make identification difficult and as mentioned earlier there was no ID parade. It is also curious that Ms Afshan did not register the FIR rather than a police officer if she was an eye witness and the applicant had come to kill her sister Darakshan who also happened to be in police custody. Furthermore if the S.491 application is to be believed which lead to the VII Civil Judge & Judicial Magistrate Karachi West's raid the applicant was already in police custody at the time of the incident as allegedly he was taken into detention by the police at 9pm on 23-07-2015 whilst the incident took place at 11.30pm on the same day.

9. Based on a tentative analysis of the material placed before us we are of the considered view that there are strong reasons to doubt that the applicant is connected to the commission of the offenses alleged in the FIR and that this is a case of further inquiry

10. These are the reasons of our short order dated 4.3.2016 whereby the applicant was granted bail subject to his furnishing surety in the sum of Rs 100,000 (one lac) with PR bond in the like amount to the satisfaction of the Nazir of this Court

Dated:-08-04-2016