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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.
Crl. Bail Appln. No.S-297 of 2021.

Date _____ Order with signature of Hon'ble Judge _____

1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Ghulam Sarwar Abdullah Soomro, advocate for the applicants.
Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of Hearing : 16.08.2021.
Date of decision : 27.08.2021.

ORDER

Omar Sial, J.- Mashooq Chandio *alias* Kaat and Zahid Ali Chandio (collectively referred to as "Applicants") have both sought post arrest bail in Crime No.80 of 2021 registered under sections 324, 353 and 398, PPC at the K.N. Shah Police Station. Earlier, their applications seeking bail from the learned 1st Additional Sessions Judge, Dadu were dismissed on 16.06.2021 and 08.06.2021, respectively.

2. The FIR was registered by ASI Ali Bux Pitafi and his narration as per the FIR is that on the night of 27.04.2021, the police was on its routine patrol duty when at around 9.30 p.m., their vehicle came within the vicinity of a local mosque. At that location, five men, armed with pistols and guns, came onto the road. They with the intent to rob and on the operating on the mistaken assumption that it was a private car, signaled the police car to stop. The police vehicle stopped and the men on board proceeded to disembark. They were instantly able to identify all the five accused (namely, Mehboob Babar, Hizbullah, Gulzar and the Applicants) due to the light emitting from the head-lights of the car. Upon disembarking, the police party asked the Applicants to surrender forthwith. In response, the Applicants resorted to opening fire on the police party. Resultantly, an encounter ensued for approximately ten minutes, with both sides firing at each other. Thereafter, Applicant Mashooq Chandio surrendered to the police by throwing his pistol on the ground and raising his hands in the air. His pistol was seized and upon inspection its magazine was found to be empty. Against the said recovery, a case under the Sindh Arms Act, 2013 was also

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registered against him. Subsequently, on the next day i.e. 28.04.2021, Zahid was also arrested.

3. I have heard the learned counsel for the Applicants as well as the learned DPG and with their able assistance have perused the record. My observations and findings are as follows.

4. Prima facie, it appears that five armed men suddenly sprang themselves on the road, in what appears to be a populated area as the incident is said to have occurred close to a mosque. It therefore requires clarification as to whether it was possible for the accused to mistake a police mobile to be a private car. Further, they all allegedly opened fire on the police party at what appears to be fairly close range for a duration of ten minutes. However, admittedly, no damage to any life or property was caused. Keeping in view that 5 men were said to be firing directly at the police party, this admitted fact appears to require further inquiry. It also appears to be improbable that the police party was able to identify, by their names, all the five assailants forthwith. Even though the Applicant Mashooq Chandio surrendered, no mention has been made of how the remaining four managed their escape. Additionally, the circumstances of the arrest of Applicant Zahid remain unclear and vague. Investigation in the case is complete and Applicant Mashooq Chandio has also already been granted bail in F.I.R. No.81 of 2021 registered under section 23 of the Sindh Arms Act, 2013.

5. Section 353 P.P.C. is a bailable offence, whereas, section 398 P.P.C. is a non-bailable offence and carries a potential punishment of 7 years and thus falls within the non-prohibitory clause of section 497 Cr.P.C. No extraordinary or exceptional circumstances have been pleaded, as stipulated by the Hon'ble Supreme Court in the case of Tariq Bashir & 5 others v. the State, reported at 1995 PLD 34 which would entail the denial of bail to the Applicants, on this ground.

6. In view of the above observations, it appears that the case of the Applicants requires further inquiry. Accordingly, they are admitted to post arrest bail, subject to them furnishing solvent sureties in the sum of Rs.50,000/- each and P.R. Bonds in the like amount to the satisfaction of the learned trial Court.

 27/8/21
JUDGE