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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
1st Crl. Bail Application No. D-06 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection 'A'
2. For Hearing of Bail Application

26.02.2019

Mr. Azhar Hussain Abbasi, Advocate for the applicant.
Mr. Aitbar Ali Bullo, D.P.G for the State.

Through this application, applicant Muhammad Moosa Bhutto, seek his release on post arrest bail in Crime No. 51 of 2018 registered at Police Station Rustam, under section 324, 353, 148, 149, PPC r/w Section 6/7 of Anti Terrorism Act, 1997. The accused preferred his bail plea before the trial Court but his request was turn down by means of order dated 02.02.2019. The case after thorough investigation was challaned by police on 22.12.2018 which is now pending for trial before the Court of Anti Terrorism Shikarpur vide Special Case No. 73/2018 re. Stat v. Muhammad Moosa.

2. The crux of prosecution as depicted in the F.I.R by complainant Inspector Mukhtiar Ahmed Soomro, SHO Police Station Rustam is that on 08.12.2018 he alongwith his subordinate staff was on patrol duty vide daily diary No.16 at 1700 hours. During patrolling, they received spy information that accused Ali Ahmed along with his companions armed with weapons are shifting abductee of Crime No.146/2018 of PS New Foujdari under section 365/A, 395 PPC, 6/7 of ATA namely Asghar s/o Mumtaz Ali Naper by two motorcycles from one place to another and were coming through katcha path towards Giranani curve. On receipt of such information, the complainant along with his subordinate staff rushed towards the pointed place and at

1730 hours they saw six persons coming by two motorcycles. The complainant party saw and identified that on one motorcycle accused Ali Ahmed armed with G-3 rifle, accused Mohammad Moosa empty handed driving the motorcycle and in their front one boy aged about 13/14 years empty handed and on second motorcycle three unknown accused with open faces whom they saw and will identify if seen again. One person was empty handed who was driving motorcycle and remaining two accused were armed with Klashnikovs. The police party directed the accused to surrender whereupon they fired upon police with intention to commit their murder. The police retaliated the firing and succeeded to arrest accused Ali Ahmed alongwith G-3 rifle, accused Muhammad Moosa, empty handed and one boy and one motorcycle while rest succeeded in running away. After completing necessary legal formalities the accused were brought at police station where F.I.R was registered on behalf of the State as above.

3. Mr. Azhar Hussain Abbasi, Learned counsel for the applicant submits that instant F.I.R has been lodged by police in order to show their performance. He submits that in fact no such encounter has ever taken place. He submits that the complainant and the abductee have sworn their affidavits before the trial Court as well as before this Honourable Court whereby they have exonerated the applicant from the commission of the offence. He submits that in the main case the applicant has been granted bail by this Honourable Court vide order dated 26.02.2019.

4. Conversely, learned D.P.G appearing for the State confronting with the above factual position does not support the impugned order.

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5. We have heard learned counsel for the applicant as well as learned D.P.G for the State and perused the material made available before us. Admittedly, this is the off-shoot of main case i.e. Crime No.6/2018 P.S New Foujdari, Shikarpur where the abductee has not supported the prosecution case and has exonerated the applicant from the commission of the offence. Consequently, in the said case the applicant has been granted bail by this Court vide order dated 26.02.2019. It is also admitted fact that during the encounter which is alleged to have continued for about ten minutes none from either side received a single scratch which makes the case of the prosecution doubtful. Nothing incriminating has been recovered from the possession of the applicant. The applicant as shown in the F.I.R was empty handed and was driving the motorcycle, had not fired or quarreled with police, thus has not caused any kind of deterrence in performance of their lawful duty, which may bring him within the ambit of section 353, 324, 148, 149, PPC read with section 6/7 of ATA, 1997. Thus, his alleged participation is not much of consequence and require probe. In the circumstance we are of the considered view that the case against the applicant requires further inquiry as contemplated by subsection (2) to Section 497, Cr.P.C. Consequently, instant bail application is allowed. Accordingly, applicant Muhammad Moosa Bhutto is granted bail in Crime No. 51 of 2018 PS Rustam. He shall be released on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- with P.R bond in the like amount to the satisfaction of the trial Court.


Judge


Judge