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ORDER SHEET

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

Cr. Bail Appln. No. D- 20 of 2020.  
Cr. Bail Appln. No. D- 21 of 2020.  
Cr. Bail Appln. No. D- 19 of 2020.

Date	Order with signature of Hon'ble Judge
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| 14.7.2020. | <p>1. For orders on office objection as flag A.<br/>2. <u>For hearing of bail application.</u></p> |
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Mr. Abdul Waheed Lashari, advocate for the applicants in Cr. Bail Applications No.D-19 and D-20 of 2020.

Mr. Rafique Ahmed Abro, advocate for the applicant in Cr.Bail Appln. No.D-21 of 2020.

Mr. Muhammad Noonari, D.P.G a/w injured PW SIP Liaquat Ali.

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**MUHAMMAD SALEEM JESSAR-J.:-** By this common order we intend to dispose of these three bail applications being Cr.Bail Applications No.D-20, 21 and 19 of 2020 arisen out of same Crime No.02 of 2020 of P.S Waris Dino Machhi for offence under Section 324, 353, 427, 148, 149 PPC and 6/7 ATA and its offshoot case bearing Crime No.05 of 2020 of P.S Waris Dino Machhi for offence under Section 24 of Sindh Arms Act, 2013. as common questions of law and facts are involved in these applications.

2. Crux of prosecution case as unfolded by complainant ASI Sodho Khan in his FIR lodged on 08.02.2020 at 0700 hours is that on the fateful day i.e 08.02.2020 he alongwith subordinate staff left P.S under daily diary No.38 dated 08.02.2020 at about 0500 hours for causing service of the notice upon respondents Munsif, Atta Muhammad, Muhammad Ayoob and Taj Muhammad Lashari, issued by the Court of Additional Session Judge, Ratodero in the application under Section 491 Cr.P.C and after keeping arrival entry No.20 dated 08.02.2020 at 0530 hours at P.S Waris Dino Machhi proceeded towards residential address of above respondents. At about 0545 hours, when they reached at the lands of Babal Khan Jakhrani near house of accused Munsif Lashari they saw 8 armed men on headlight of vehicle and identified to be Munsif Ali, 2. Atta Muhammad, 3. Arbello and 4. Muhammad Ayoob (one of applicants herein) having pistols in their hands, 5. Taj Muhammad armed with

repeater and 6. Abdul Razak (one of applicants herein) armed with K.K and two unknown persons armed with K.Ks who by seeing police party fired upon them. The police party alighting from their vehicle took position and retaliated the firing in their defence. During the encounter some fires hit to their official vehicle. Meanwhile SIP Liaquat Ali Malgani advanced to encircle accused when co-accused Munsif (absconder) made straight fire from his pistol upon SIP Liaquat Ali which hit him and he fell down. Firing lasted for 15 minutes and then while taking advantage of the injuries sustained by SIP Liaquat Ali, all the accused decamped from the scene. Thereafter it was seen that firearm injury sustained by SIP Liaquat Ali was through and through. He was shifted to Taluka hospital and later on he was referred to CMC Hospital Larkana. The complainant after leaving the injured P.W at hospital came back to Police Station and instant FIR was registered to the above effect.

3. After registration of FIR, the investigation was entrusted to SIP Wazeer Ali and during course of investigation accused Arbello @Abdul Ghafoor Lashari, Muhammad Ayoob and Abdul Rasheed were arrested on 19.2.2020. After completion of legal formalities, charge sheet was filed before competent Court of law having jurisdiction on 10.3.2020 and now the case is pending trial before learned Special Judge, Anti Terrorism Court, Larkana vide Special Case No.06 of 2020 re: State v. Arbello @Abdul Ghafoor and others.

4. Mr. Abdul Waheed Khushk, learned counsel for the applicant Muhammad Ayoob Lashari submits that though applicant Muhammad Ayoob has been nominated in the FIR but no any effective role has been assigned to him and the recovery of crime weapon from Muhammad Ayoob has been foisted against him with false assertion that crime weapon was recovered from the place pointed out by him. He further submits that applicant has no nexus or concern with the present incident and he has wrongly been arrayed as accused by the police being from Lashari community. He further submits that as far as application of Section 6 of ATA is concerned, it is yet to be established by the prosecution and it is to be determined by the trial Court whether it was rightly applied or otherwise.

5. Mr. Rafique Ahmed Abro, advocate appearing on behalf of applicant Abdul Razzak contended that though applicant Abdul Razzak was allegedly armed with weapon at the time of incident, yet no overt

act has been attributed to him except mere the ineffective firing and nothing has been recovered from his possession to connect him with the commission of crime. He next submits that as and when applicant learned about instant case he rushed to the Court concerned for getting anticipatory bail where his bail application was dismissed and he was taken to custody. In such eventuality he urged that applicant Abdul Razzak deserves to be enlarged on bail.

6. Both learned counsel also submit that Saifuddin Sarki on whose application under Section 491 Cr.P.C the police party was allegedly going to serve notice upon accused has not been made witness in the instant case. In support of his contention, learned counsel has placed reliance upon unreported order dated 25.6.2019 passed by this Court in Cr. Bail Appln. No.D-16 of 2019; case reported as Ziaullah and another v. The State and another (2020 P.Cr.L.J Note 51), Jan Muhammad @Janan and others v. The State (2016 P.Cr.L.J Note 42), Dost Muhammd @Dosoo v. The State (2017 YLR 1320) and Ghulam Abbas v. The State (2017 MLD 1535). Learned counsel, therefore, submit that case against the applicants is purely covered within meaning of subsection 2 of Section 497 Cr.P.C and they deserve to be enlarged on bail during pendency of their case.

7. Learned D.P.G opposed the bail applications and submits that applicants have been nominated in the FIR with specific role of causing firearm injuries to police party. He points out that one of police official namely SIP Liaquat Ali had sustained firearm injury on his person at the hands of accused besides the applicants have also caused fire shots upon the police vehicle thus they have rightly been arrayed as accused in this case. He next submits that in view of their indiscriminate firing fear and terror was spread in the area which attracts the ATA therefore, offence carries maximum punishment hence applicants do not deserve any leniency for bail. He also pointed out that co-accused who has been granted bail by the trial Court was nominated in the FIR, therefore, applicants can not claim constant treatment. In support of his contentions, he has placed reliance on the case of Aslam Suhriani & another v. The State (2017 P.Cr.L.J 274) and submits that the applications being meritless may be dismissed.

8. We have heard learned counsel for the parties and have gone through the material made available before us on the record.

Admittedly police party as well as accused were armed with deadly weapons and there was exchange of firing but luckily none from accused particularly present applicants had sustained any injury on their persons. As far as injury allegedly sustained by the official witness is concerned, it is attributed to the co-accused Munsif who is not before this Court and he is not arrested by the police so far. The residence of accused as shown by the police is of District Jacobabad however, I.O has failed to pinpoint or justify their nexus with the party upon whom police had to cause service of notice. The plea taken by the accused for being opponent of Babal Khan Jakhrani they have been arrayed as accused by the police at his instance, thus carries weight. Moreover no specific role or overt act is assigned to present applicants except co-accused Munsif who is not before the Court. This is a police case in which all the prosecution witnesses as well as mashirs of recovery and arrest are police personnel whose testimony can not be taken as gospel truth, therefore, in the wake of all that has been discussed above, the prosecution case against the present applicants calls for further enquiry and foistation of alleged recovery of crime weapon from applicant Muhammad Ayoob falsely can not be ruled out.

9. In our considered view, the applicants have successfully made out a good *prima facie* case for their release on bail within meaning of Subjection 2 to Section 497 Cr.P.C. Consequently these bail applications are hereby allowed. Applicants Muhammad Ayoob and Abdul Razzak shall be released subject to furnishing solvent surety in the sum of Rs.200,000/= each in all three bail applications and P.R bond in the like amount to the satisfaction of trial Court.

10. Needless to say that observations made hereinabove are tentative in nature which shall not influence the mind of learned trial Court while deciding the fate of the applicants at the trial.

The applications stand disposed of.

JUDGE

JUDGE