

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Bail Appln. No. S- 441 of 2017.

Date of hearing	Order with signature of Judge
10.11.2017.	

Mr. Zahid Hussain Chandio, Advocate for applicants.
Mrs. Rubina Dhamrah, ADPP.

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**Muhammad Saleem Jessar, J:** Applicants Khan Muhammad and Muhamarram seek post-arrest bail in F.I.R No.26/2017, registered at P.S Badeh (District Larkano), for offences punishable under Sections 402, 399, 324 and 353 P.P.C. Earlier, bail plea of the applicants was turned down by learned 3<sup>rd</sup> Additional Sessions Judge, Larkana, vide his Order dated 26.08.2017. The case is now pending for trial before Assistant Sessions Judge-III, Larkano, vide sessions case No. nil, Re; State versus (not mentioned in progress report furnished by the trial Court dated 01.11.2017).

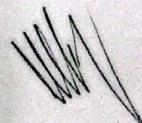
The crux of prosecution case is that on 11.8.2017, SHO Abdul Ghafoor Chutto of P.S Badeh lodged report on behalf of the State, alleging therein that on fateful day he with his subordinates was on patrolling, during which, when they reached Khair Wah link road of Dokri-Badeh, found that some stones are kept on the road and seven armed persons were standing by the side of the road, as such police party alighted from their vehicle, to which the accused persons made direct firing upon them and the police party retaliated; such encounter continued for about five minutes and ultimately the police succeeded in apprehending all the culprits, who on enquiry disclosed their identity as Barkat Chandio having rocket launcher and "Gola", 2. Saeed alias Shoukat Junejo having G-3 rifle and bag containing 235 live bullets, 3. Ali Hassan Junejo with G-3 rifle and ten live bullets, 4. Sobdar Junejo with 30-bore pistol, 5. Ismail Khoso with 12-bore SBBL gun and live cartridges, 6. Muhamarram Junejo with 12-bore repeater (gun) and 7. Khan Muhammad Junejo with DBBL gun with 24 live cartridges. On enquiry, the captives

disclosed the weapons; to be unlicensed, as such the police prepared such mashirnama and ultimately brought accused and the property at Police station, where instant F.I.R was lodged on behalf of the State, besides separate cases under Arms Act were also registered against each of accused.

Heard learned counsel for applicants as well as learned ADPP and perused the material available on record.

Learned counsel for the applicants mainly contended that, no any independent person has been cited as witness though the alleged incident is said to have taken place at very busy road; that this is case of ineffective firing, as neither anybody from police party nor from accused received any injury or even any scratch. Learned counsel further contended that, in-fact the applicants were arrested by the Rangers personnel and ultimately they were handed to district police, who have managed these cases in order to show their efficiency to their high-ups. He also submitted that, it is very astonishing and surprising that during face to face firing for five minutes from very close range, no body from either party received any scratch and this fact supports the defence plea that the accused were arrested from their houses. Learned counsel lastly submitted that challan against the applicants has already been submitted; they are no more required for investigation and their further detention in jail would not serve any purpose, therefore, he prayed for grant of bail to the applicants. In support of his contentions the learned counsel placed reliance on 2016 P.Cr.L.J 54, 2017 MLD 46 and 2014 MLD 414.

Conversely, learned ADPP appearing for State opposed grant of application on the ground that the applicants have been arrested on spot after an encounter with police and crime weapons have also been recovered from their possession. Learned ADPP supported the impugned order but could not distinguish the case law relied upon by learned counsel for the applicants.



Perusal of record reflects that all the witnesses including mashirs are the police officials and no independent person from vicinity has been cited as witness or mashir, though the place of alleged incident is said to be a common road. No doubt, the evidence of the police officials is as good as other witnesses, but when the whole case rests upon sole evidence of police officials, their evidence requires deep scrutiny at trial. Per prosecution case, the accused persons fired at police party for about five minutes straightly, but it is astonishing and surprising that during such face to face firing which lasted for five minutes, no body from either party received any scratch; this is also very surprising and does not appeal to a prudent mind; on the contrary, it supports the defence plea that the accused may have been arrested from their houses, as such the defence plea carries some weight and at this juncture mala fide on part of the police cannot be ruled out, therefore, the case of the applicants requires further probe as contemplated by subsection (2) of Section 497 Cr.P.C. Applicants have been in jail since date of their arrest i.e. 11.8.2017. The challan of the case has been filed and applicants are no more required for the purpose of investigation.

Accordingly, instant bail application stands allowed. The applicants are granted bail upon their furnishing solvent surety in the sum of Rs.100,000/- (One hundred thousand rupees) *each* and P.R bonds in the like amount to the satisfaction of trial Court.

Needless, to mention that the observations made hereinabove are tentative in nature and would not prejudice case of either party at trial.

JUDGE  
19/11/17

Ansari/\*