

Date of
Hearing
07.03.2019.

ORDER WITH SIGNATURE OF JUDGE

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

Mr. Rafique Ahmed K. Abro, advocate for the applicant.
Mr. Sharafuddin Kanhar, APG.

Through this application, applicant Ibrar Ahmed Dhamraho seeks his release on post arrest bail in Crime No.34/2018 of Police Station Dhamrah, under Sections 24 of Sindh Arms Act, 2013. The case after challan is pending trial in the Court of IV-Additional Sessions Judge, Larkana vide Sessions Case No.594 of 2018 re-State v. Ibrar Ahmed Dhamrah.

Per prosecution case, on 12.09.2018 a police party headed by HC Abdul Qayoom Jarwar was on patrolling duty and received spy information that nominated accused of Crime No.29/2018 of PS Dhamrah, under Section 324, PPC, was standing at the Chandia Salinity Minor on Larkana-Ratodero road, therefore, he along with his subordinates rushed to the pointed place, where a person was standing, who was apprehended by him and on his enquiry he disclosed his name to be present applicant. On his body search a pistol of 30-bore without number having a magazine containing 04 live bullets of 30-bore were secured from his possession, therefore, instant case was registered against the accused on behalf of State.

Mr. Rafique Ahmed K. Abro, learned Counsel for the applicant, submits that instant case is offshoot of main case bearing Crime No.29/2018 of PS Dhamrah, which is also pending trial before the same trial Court, where the applicant has been bailed out on the ground of affidavits. In support of his contention, he has placed on record copy of order dated 11.01.2019 under the cover of his statement dated 07.3.2019; same is taken on record. He, therefore, submits that applicant be enlarged on bail in this case being offshoot of the above-mentioned main case. He has relied upon the reported cases of *Yasir*

Chaudhry Vs. The State (2012 MLD 1315) and *Ayaz Ali v. The State* (PLD 2014 Sindh 282).

Learned APG after going through the record opposes the bail application on the ground that the grant of bail to the applicant/accused in the main case does not make him entitled for grant of concession of bail in this case.

Heard arguments and perused the record.

Admittedly, instant case is the offshoot of main case, in which the applicant has been granted post arrest bail by the trial Court and this being offshoot of the said main case deserves to be considered upon the outcome of the bail application filed by the applicant before the trial Court in main case. As far as punishment provided by law for instant case is concerned, in case of *Ayaz Ali* (supra) learned Bench of this Court while discussing the nature of offence and quantum of the sentence has discussed the issue in following terms:-

"It is germane to append here that plain reading of sections 23 and 24, elucidate that section 23(1)(a) provides maximum punishment upto 14 years, whereas section 24 provides upto ten years, thus, apparently instant case, wherein recovery is pistol, which falls within the definition of "arms" as provided in the section 2, which carries maximum sentence ten years as provided in section 24 of the Sindh Arms Act, 2013.

10. *As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under section 24 of the S.A.A., 2013 is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensurate with the nature of case. The record is also silent as to whether the applicant is a habitual or previous convict, hence all these facts make the case against him as that of further inquiry.*

11. *Reverting to the factual aspect of this case; admittedly all witnesses are police officials; case is pending before trial Court for adjudication of guilt; accused is no more required for further investigation; therefore, there is no likelihood of tampering in the prosecution case. Moreover, it is settled principle of law that bail cannot be withheld as punishment."*

In view of above and in view of the principle laid down in the cases of *Ayaz Ali* and *Yasir Chaudhry* (supra), instant bail application is hereby allowed. Applicant Ibrar Ahmed Dhamraho shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) and P.R bond in the like amount to the satisfaction of trial Court.


JUDGE