

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CR. B.A. NO. 1446 OF 2016

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| Date | Order with signature of Judge |
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PRESENT:
MR. JUSTICE ARSHAD HUSSIAN KHAH

FOR HEARING OF BAIL

28.11.2016.

Muhammad Aslam Shar Advocate for applicant
Mr. Riyasat Ali DDP.

ARSHAD HUSSAIN KHAN, J: Through this order I intend to dispose of above bail application.

2. The applicant/accused namely, Mehboob son of Muhammad Soomar, through the above bail application has sought post arrest bail in case F.I.R. No.147/2011 registered under Section 324/353/186/34 PPC, at Police Station SITE-A, Karachi.

2. Brief facts, as narrated in the F.I.R., are that the complainant S.I Khan Nawaz of PS. SITE-A, alongwith PC Athar Shah 2478, PC Gohar 9158 and driver PC Muhammad Afzal 20505, while patrolling in the area on Police Mobile at 1145 hours saw a motorcycle bearing No.BUC-2188, makers super power black colour, model 2010, coming from south Avenue Road, on the motorbike two suspicious persons were going towards Siemens *Chowrangi* and they signify them to stop, on seeing police mobile they enhanced the speed of motorbike and tried to escape, the complainant and other police officials followed them on police mobile, the said persons turned the motorbike towards Force Road from Siemens *Chowrangi*, police party continued to follow them. Upon reaching at the street of Phillips company the said persons on

seeing the police party near them, they started firing upon police party with the intension to kill them, on that police party in their defence made aerial firing and apprehended the accused persons who disclosed their names as (1) Jawed Leghari son of Ghulam Rasool (2) Mehboob son of Muhammad Soomar Gopang, on their personal search, police party recovered a TT pistol of 30 bore without number load magazine 3 live cartridges from right hand of accused Jawed, on further search a sum of Rs.1000/- and a mobile phone Nokia 1110 were recovered from him including the keys of machine made which is used to open the lock of motorcycle and also recovered TT pistol, 30 bore without number loaded magazine 2 live cartridges from the right hand of accused Mehboob and further a sum of Rs.1000/ a mobile phone, one card in the name of Mehboob including master key for opening motorbike. Thereafter the complainant lodged the FIR of the above incident.

3. On 07.04.2011 the present accused and co-accused namely Jawed were granted bail by the trial court on merits. The present accused upon furnishing surety on 08.09.2011 was released on bail. The record shows that the present accused and co-accused remained absent during trial since 22.11.2012. Subsequently, both the accused were declared, as proclaimed offender on 28.06.2013 and case was kept dormant. The record also shows that on 29.08.2016 SIP Suleman Shah of PS SITE-A, Karachi informed the trial Court that present accused had been arrested on 12.07.2016 in another case crime No. 359/2016, PS Gulshan-e-Iqbal under Section 381-A, PPC and was confined in District Jail Malir. Accordingly, his production order was issued and he was produced before the trial court on 10.09.2016. Thereafter, the present accused filed second bail application before the Additional Sessions Judge-IV, Karachi (West). The said bail application was dismissed by the learned court vide its order 26.09.2016, thereafter the present bail application has been filed.

4. Learned counsel for the Applicant/accused during the course of his arguments has contended that the applicant is absolutely innocent and has been falsely implicated in this case by the police with malafide intentions and ulterior motives. It is also contended that nothing has been recovered from the possession of the applicant accused, which could connect the applicant with the alleged crime. Further contended that the offence under section 353 PPC is bail-able and whereas offence under section 324 PPC is not applicable against the applicant. Further contended that all the witnesses are police personnel and no specific role of applicant/accused is mentioned in the FIR. The case does not fall under prohibitory clause of section 497 Cr. P.C. It is also contended that the case of the Applicant is a clear-cut case of further enquiry and the applicant is entitled to the grant of bail. Learned counsel also contended that due to misunderstanding, the present applicant/ accused remained absent during trial as he was informed by co-accused that case has been disposed of. It is further contended that it is settled principle of law that grant of bail is rule, while its refusal is an exception. In this regard the learned counsel also relied upon the case law reported as PLD 1995 SC 34.

4. The learned D.D.P for the state has vehemently opposed the bail application and argued that present case falls within the exceptions of the general rule. The learned D.D.P has further argued that the applicant/accused was earlier granted bail on merit however, he jumped the bail and remained absconder for a long period and apprehended in another FIR, and as such he is not entitled to the concession of bail in the present case.

5. After giving careful consideration to the arguments of the learned counsel for applicant/accused, D.D.P, and with their assistance perused of record, I find that the applicant/accused was earlier granted bail by the trial court on merits, however, he

misused the concession and jumped the bail and remained fugitive from the law for about four years and then he was apprehended in another crime. It is also settled law that a person, who is fugitive from law and absconder from justice, is not entitled for the concession of bail. In this regard the case of *Awal Gul v. Zawar Khan & Others* (PLD 1985 SC 402), can be relied upon wherein the apex Court concluded that a fugitive from law and Courts loses some of their normal rights granted by procedural as also substantive law, unexplained noticeable abscondence disentitles a person from the concession of bail notwithstanding merits of the case.

6. So far the case law relied upon by the learned counsel for the applicant/accused is concerned the same is distinguishable to the facts of present case. Even otherwise, it is settled law that every criminal case is to be decided on its own merits.

7. In view of what has been stated in the foregoing, I am satisfied that on the basis of facts as presently available on the record, the applicant has failed to make out the case of concession of bail as there is every likelihood that if applicant/accused is granted bail he will again abscond. Accordingly, this bail application is hereby dismissed.

8. Needless to say the observations made in this order are of a tentative nature and only for purposes of this bail application. Nothing herein shall affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case.

JUDGE