

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Naimatullah Phulpoto

Mr. Justice Shamsuddin Abbasi

Crl. Bail Application No.122 of 2018

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Bilal Mehmood son of
Mehmood Muslim. Applicant

Versus

The State. Respondent

Applicant Through Mr. Muhammad Kashif,
Advocate.

Respondent Through Mr. Muhammad Iqbal Awan,
DPG

Date of hearing 08.03.2018

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ORDER

Shamsuddin Abbasi, J: Applicant/accused Bilal Mehmood son of Mehmood Muslim seeks bail in FIR No.379 of 2017 under Section 353, 324, 186 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 and FIR No.382 of 2017 under Section 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. Korangi, Karachi.

2. Precisely, the case of the prosecution is that on 05.11.2017, police party of P.S. Korangi, Karachi, headed by ASI Muhammad Asif Khan, was busy in patrolling of the area in official mobile. It was about 0030 hours, when they reached at Link Road, Sector 35-A, Zaman Town, Korangi No.4, Karachi, they saw four person riding on two motorcycles coming in suspicious manner. Police party signaled them to stop whereupon they alighted from their motorcycles and started firing upon the police with intention to kill them as a result of which two bullets hit on right side body of the police mobile. Police also fired in their self defence and succeeded in

causing their arrest. On inquiry, they disclosed their names as Shoaib son of Zubair, Shahzad @ Funter son of Sultan, Naseer Ahmed son of Bashir Ahmed and Bilal Mehmood son of Mehmood Muslim. On their personal search, police recovered one 30 bore pistol without number with magazine loaded with a bullet in chamber from the right hand of accused Shoaib, one 30 bore pistol without number with magazine loaded with a bullet in chamber from the right hand of accused Naseer Ahmed and one 30 bore pistol without number with load magazine containing two live bullets and one bullet in chamber from the right hand of accused Bilal Mehmood. On demand, the accused failed to produce the licenses of the recovered pistols as well as documents of the motorcycles. Police arrested the accused persons on the spot. Thereafter, police brought the accused and case property at P.S. Korangi, where two FIRs being Crime No.379 of 2017 under Section 353, 324, 186 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 and FIR No.382 of 2017 under Section 23(1)(a) of Sindh Arms Act, 2013 were registered against applicant/accused.

3. After usual investigation the police submitted challan against accused before the Court of competent jurisdiction,

4. The applicant/accused moved separate bail applications in aforesaid crimes/cases before the learned trial Court and both bail applications were dismissed vide common order dated 19.12.2017. We intend to decide aforesaid bail applications by this single order.

5. Learned counsel for the applicant contended that the applicant/accused has been falsely implicated in the case of ineffective firing. He further contended that no iota of evidence has been brought on record to connect the applicant/accused with the commission of crime. It is contended that the alleged incident had

taken place in a thickly populated area, but police failed to associate any independent person to witness the recovery proceedings. It is submitted that applicant/accused is not a hardened, desperate or dangerous criminal. He lastly submits that the case against the applicant/accused requires further inquiry.

6. On the other hand, learned DPG for the State has opposed the grant of bail to the applicant/accused on the ground that he was arrested at scene of offence alongwith weapon, he alongwith his accomplices fired on the police party with intention to kill them and two bullets hit to the police mobile.

7. Heard arguments of both the side and perused the record entire material available before us.

8. It is the case of the prosecution that encounter had taken place in between police and accused, both were armed with deadly and sophisticated weapons, but none from both sides had received any injury/scratch. It is also very difficult to believe that accused, who were armed with pistols, and fired from their weapons to kill the police personnel, but police arrested them without resistance when their bullets were in chamber. Apparently, in view of this matter, application of Section 324, PPC is yet to be determined at the trial. It is also a matter of record that police had recovered empties of 30 bore pistols from the place of incident, but did not send the same to forensic lab alongwith recovered pistols for matching purposes. All the prosecution witnesses are police officials, therefore, question of tampering with the prosecution evidence does not arise. Case has been challaned and applicant/accused is no more required for further investigation. It is a well settled principle of law that the Court cannot go beyond the facts of the case and has to restrict itself

to the material placed by the prosecution and further for the purpose of disposal of bail application tentative assessment is to be made and no deeper appreciation is allowed. Applicant/accused is in custody since last four months. Reliance is placed on the case of *Rab Nawaz v The State* reported in 1990 SCMR 1085, wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“In view of the absence of any bullet injury, the fact whether the petitioner did intentionally fire at the police party, but was unsuccessful to hit anybody, because the bullet missed, or the case has been padded by the inclusion of this false firing, assumes prominence and since this matter cannot be determined, till proper evidence is recorded in the case, we would, taking all circumstances into consideration, allow bail to the petitioner.

9. In another case of *Syed Amanullah Shah v The State* reported in PLD 1996 SC 241, the Hon'ble apex Court while granting bail to accused has observed as under:-

“To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused”.

10. Prima facie, a case for bail is made out in favour of the applicant/accused. Therefore, concession of bail was extended to the

applicant/accused by our short order dated 08.03.2018 and these are the reasons thereof.

11. Needless to mention here that the observations made herein above are tentative in nature and the trial Court shall not be influenced by the same, while deciding the case(s) of the applicant/accused on merits in accordance with law.

JUDGE

JUDGE

Naeem