

**IN THE HIGH COURT OF SINDH, BENCH  
HYDERABAD**

**Cr. Bail application No.D-26 of 2018**

Applicant:                      Rafaqatullah s/o Muhammad Sulleman  
By caste Jarwar  
Through Mr. Ali Ahmed Palh, Advocate

**Cr. Bail application No.D-27 of 2018**

Applicant:                      Muhammad Aarab s/o Khamiso Soomro  
Through Mr.Farhad Ali Abro, Advocate

The State:                      ThroughMiss. SafaHisbani  
Assistant Prosecutor General.

Date of hearing:              27.06.2018.

Date of order:                27.06.2018.

**ORDER**

**AMJAD ALI SAHITO, J.**-By this single order we intend to dispose of captioned bail applications which are arising out of Crime No.42 of 2018 registered at police station Hatri Hyderabad for offence punishable U/s 324, 353 PPC, 5 of the Explosive Substances Act, 1908, 6/7 of Anti-Terrorist Act.Applicants Rafaqatullah and Muhammad Aarab who have been booked in above crime, seek post arrest bail after rejection of their bail applications by learned Anti Terrorism Court Hyderabad in A.T.C Case No.18 of 2018 vide order dated 23.05.2018.

2- Precisely the prosecution case is that complainant SHO Zulfiqar Ali Chachhar while reporting the matter to police station Hatri stated that on 02.3.2018at 0200 hours

he left police station under roznamcha entry No.30 along with his subordinate staff ASI Muhammad Ayoub, PC Dhani Bux PC Ahsan Ali and DHC Muhammad Soomar for patrolling in Government vehicle. During patrolling when they reached at Malak Petrol Pump, spy information was received regarding availability of five persons in the previous house of Ali Muhammad Magsi, making a plan to blast the bomb at populated area to create terror. Complainant conveyed such information to his superiors through control and directed the Bomb disposal squad and Ambulance to reach at place of incident. Thereafter they arrived at pointed place and encircled the previous house of Ali Muhammad Magsi. Meanwhile at 0200 hours SIP Ramzan Panhwar Incharge BDS along with his team and an ambulance also reached over there. The main gate of the premises was knocked, upon which the accused persons started firing at police party, they also took their position and retaliated the fires which was lasted for about 10/15 minutes. Complainant through megaphone asked the accused persons to surrender before the police and then door of said premises was opened from inside, police party entered the house and arrested five accused persons who on inquiry disclosed their names to be Muzaffar Hussain s/o Mukhtiar Hussain Nangraj, from his possession one Kalashnikov rifle with empty magazine was recovered, (2)

Shakeel Ahmed s/o Bashir Ahmed alias Shabbir Ghangro and from his possession one 30-bore pistol with empty magazine was recovered, (3) Ghulam Murtaza s/o Ghulam Sarwar Abro from his possession one 30-bore pistol with empty magazine was recovered, (4) Rifaqatullah s/o Sulleman Jarwar, from his possession one 30-bore pistol with empty magazine was recovered and (5) Muhammad Aarab s/o Khamiso Soomro however, nothing was recovered from his possession. From search of the premises three bombs and some other explosive substance devices were recovered so also 10-empties of KK Rifle and 10-empties of 30 bore were also secured. The bombs were defused by the BDS and property was sealed under memo of arrest and recovery and then accused and property were brought at police station where instant FIR was registered.

3- Mr. Ali Ahmed Palh learned counsel for the applicant Rifaqatullah contended that he is innocent and has falsely been involved in this case; that applicant/accused was arrested by the Law Enforcing Agencies and such reports were published in different newspapers which shows that applicant/accused was already in their custody and subsequently involved in this case; that no any independent witness from the place of incident has been associated to witness the alleged arrest and recovery hence there is violation of section 103 Cr.P.C; that applicant/

accused is a journalist having no concerned with the alleged offence as he previously belonged to JSQM party and subsequently he joined Pakistan Muslim League (Functional). He lastly prayed for grant of bail to applicant/accused. He placed his reliance upon case of Muhammad Noman Vs. The State & another reported in 2017 SCMR 560.

4- Mr.Farhad Ali Abro, appeared on behalf of applicant Muhammad Aarab, contended that he is innocent and has falsely been implicated in this case; that applicant/accused is a vaccinator and working at Civil hospital Badin Health Department district Badin; that on the day of incident applicant/accused was on his duty, such certificate was issued by the Civil Surgeon Civil Hospital Badin (annexure-D page-41); that applicant/accused has been involved in this case due to police enmity; that it is a case of ineffective firing, nothing has been recovered from the possession of applicant/accused to connect him with this crime. He lastly prayed for grant of bail to applicant/accused

5- While rebutting the above contentions Learned APG opposed grant of bail as the applicants have committed crime which is detrimental against the society; that the applicants have been nominated in the FIR with specific role as they attacked upon police party and after their arrest three bombs, arms ammunition and different types

of articles to be used in explosion were secured from the house from where they were arrested and she lastly prayed for dismissal of bail applications.

6- We have heard learned counsel for the parties and perused the material available on record.

7- It is reflected from the contents of the FIR that the applicants are directly charged in the case and huge quantity of explosive substance i.e. three Desi Bombs along with other articles were recovered from the house where the applicants were arrested and one 30 bore pistol was also recovered from exclusive possession of applicant Rafaqatullah. Police also secured empty bullets of Kalashnikov and pistols from the place of incident. Recovered explosive substance along with arms and ammunition as well as empty bullets were sent to the expert for its report and per APG the reports have been received in positive. The recovery of explosive substances, arms ammunition and arrest of the applicants is fully supported by other witnesses and the applicants failed to make out the prima facie case for grant of bail, so tentatively they are connected with the commission of the offence.

8- The contention of learned counsel for applicant Rafaqatullah, regarding publication of news items in different newspapers showing the arrest of accused from

Tando Bago Town while he was sitting in a shop is concerned, the said newspaper clippings contradicting the version contained in the FIR to the benefit of the accused could not be considered at bail stage and only be proved in a way required by law of evidence of Qanun-i-Shahadat Order 1984. Moreover the newspaper clippings could not be used either in favour of the prosecution or defence unless author of the same is to be examined in a court as a witness. There is nothing on record to suggest that the applicants have any ill-will or enmity with police due to which they have been falsely involved in the instant case. The offence with which the applicants are charged falls under the prohibitory clause of section 497(1) Cr.P.C. As to the alleged abduction of applicant Muhammad Aarab by Law Enforcement Agencies before the incident, we have not been assisted in any manner with any document to suggest that between the date of alleged abduction and incident, either any report/FIR/complaint or a petition before the court was lodged, whereas, the petition referred to was only filed after registration of instant FIR. The case law cited by the learned counsel for the applicant Rafaqatullah is distinguishable from the facts and circumstances of the present case.

9- In view of above, learned counsel for the applicants have failed to make out a case for grant of bail to the

applicants, consequently instant bail applications were dismissed by our short order dated 27.6.2018. These are the reasons for our said short order.

10- Needless to mention here that the observations made herein above are tentative in nature and shall not affect the merits of the case at the trial.

**J U D G E**

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