

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Khadim Hussain M. Shaikh
Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.798 of 2018

Applicant : Sajid alias Gopa s/o Abdul Ghani Soomro
through Khawaja Muhammad Azeem,
Advocate.

State : Through Mr. Ali Haider Saleem, Deputy
Prosecutor General Sindh

Date of hearing: 12.07.2018

Date of order: 12.07.2018

ORDER

AMJAD ALI SAHITO, J -- Through the instant bail application, the applicant/accused Sajid alias Gopa seeks post-arrest bail in Crime No.40/2018 registered at PS Napier, Karachi South, for the offence under section 23(1)(a) of Sindh Arms Act, 2013.

2. The brief facts of the prosecution case, as depicted in the FIR, is that the applicant/accused along with co-accused duly armed with pistols, used criminal force upon the police party headed by SIP Tanveer Ahmed Mughal, while objecting/deterring them from discharging their official duties and fired upon them with intent to commit their murder due to which the police mobile was caused damaged. In retaliation, the police party also made firing due to which present applicant/accused made his escape good from the scene of the incident on the motorcycle taking advantage of darkness, whereas, co-accused Imran alias Memon Cheema was arrested along with an unlicensed pistol loaded with a magazine having live bullets. It is also

alleged in the FIR that after the encounter, five empties of SMG and three empties of 30 bore were also secured from the place of incident. It is also the case of prosecution that on 19.03.2018, applicant/accused was arrested by said complainant and at the time of his arrest, the applicant/accused was found in possession of an unlicensed 30 bore pistol having live bullets in its magazine used in the crime which led registration of another case against him vide Crime No.40/2018 at the same police station.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has been falsely implicated in this case; that the name of applicant/accused was disclosed by the main accused arrested in FIR No.39/2018 for the offence under sections 353, 324, 427, 186/34 PPC of PS Napier Karachi while the remaining story has been maneuvered by the police; that it is a case of planting the alleged weapon with absolute dishonest intention; that the very arrest shown is in violation of section 23 of the Act, as there is nothing word to fulfill the provisions as contained in subsection (2) of Section 23 of the Act 2013; that there is no evidence to substantiate the pre-requisite of section 24 of the Act 2013; that the applicant/accused is neither hardened nor desperate criminal; the alleged recovery has been foisted upon the applicant/accused; that all the witnesses are police official and no independent witness was cited as witness in the case which indicates that there is violation of section 103 Cr. P.C; that no specific role has been attributed to the applicant/accused and there is general allegation against him; that the applicant/accused was involved in the case on disclosure of co-accused, hence the case against the applicant/accused falls under further enquiry; that the applicant/accused was not arrested at the

spot and he was shown arrested later on which also makes the case for further enquiry. Lastly, learned counsel for the applicant/accused prayed for bail.

4. Learned DPG for the State opposed to the grant of the bail application on the ground that the applicant/accused had succeeded to flee away during the encounter and was arrested later on by the same complainant/SIP having the same pistol used in the encounter for which the case being Crime No.40/2018 was registered; that one of the empties of 30 bore secured from the place of incident was also found matched with pistol secured from possession of the applicant/accused as per FSL report available in the police, therefore, there is sufficient evidence against the applicant/accused besides disclosure of name of the present accused by co-accused; that the offences committed by the applicant/accused have created insecurity and panic in the public while attacking upon law enforcement agency and in defence firing made by them, present accused made his escape good from the scene on the motorcycle. He prayed that the material collected against the applicant/accused is sufficient which disentitles him for concession of bail at this stage.

5. We have heard the learned counsel for the applicant and learned DPG for the State and perused the material available on record.

6. It is an admitted fact that the applicant/accused has been granted bail in main case bearing Crime No.39/2018 under sections 353, 324, 427, 186/34 PPC of PS Napier, Karachi South and the present case being off-shoot of the same deserve to be released on bail on the ground of further inquiry. The case in hand regarding punishment has to be determined by the learned trial Court. In such

like cases, whether accused would be liable to the maximum punishment as provided for the offence and also as to whether the punishment in the case of proof of guilt after trial in the circumstances would fall under the prohibitory clause are the questions, requiring further probe. As far as, the working condition of the alleged weapon is concerned, no Ballistic Expert or Forensic opinion is available on the record to show whether it was in working condition or not. It will be decided at the time of the trial, when the prosecution will lead their evidence, therefore, in the circumstances, the case of the applicant/accused requires further inquiry and consequently instant bail application was allowed vide our short order dated 12.07.2018, whereby the applicant/accused was granted 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 the learned trial Court, in case based on FIR No.40/2018 under section 23(1)(a) of Sindh Arms Act, 2013, registered at PS Napier, Karachi South.

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

8. These are the reasons of the said short order dated 12.07.2018.

J U D G E

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