

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

Criminal Bail Application No.797 of 2018 **Criminal Bail Application No.799 of 2018**

Applicant in BA : Sajid alias Gopa S/o Abdul Ghani
No.797/2018

Applicant in BA : Imran @ Memon Cheema S/o Hussain
No.799/2018 Ahmed

Both through Khawaja Muhammad
Azeem, Advocate.

State : Through Mr. Ali Haider Salim, 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 applicants/accused Sajid alias Gopa S/o Abdul Ghani and Imran @ Memon Cheema S/o Hussain Ahmed seeks post-arrest bail in Crime No.39/2018 registered at Police Station Napier, Karachi South, for the offence under sections 353, 324, 427, 186/34, PPC.

2. The brief facts of the prosecution case, as depicted in the FIR, is that with reference to Roznamcha Entry No.26 at about 1200 hours SIP Tanveer Ahmed Mughal along with PC Aijaz

13134 rifle PC 09676/20 Niaz Ahmed 10077 rifle PC 58131/20 Irshad Ali 33057 rifle, 82561/20/20 Driver PC Muhammad Banarqas 33335 on government mobile-II, SPC769 were busy in patrolling in the area for prevention of crime in the locality. During patrolling, they reached near Syed Mehmood Shah Road near Rehmania Chowk opposite Al-Farooq Street Shop and found two persons in suspicious condition and at about 0030 hours the police party tried to apprehend them but they after seeing the police persons started firing with intention to murder and the police persons saved themselves inside the vehicles going through on road and the police officials PC Aijaz and PC Niaz Ahmed with the help of other police officials apprehended, one accused and another escaped away on his motorcycle, who disclosed his name as Sajid alias Gopa S/o Abdul Ghani aged about 31 years and told the name of his companion as Imran alias Cheema S/o not known and the personal search of the accused was made in presence of the witnesses and recovered 30 bore pistol from his possession and Rs.200/- cash and mobile phone from his possession and the accused failed to produce valid licence, therefore, the act of accused falls under sections 353, 324, 427, 186/34, PPC and under section 23(1)(a) of the Sindh Arms Act, 2013 the alleged recovery sealed at the spot and the separate FIRs were registered against the accused persons.

3. Learned counsel for the applicants/accused has contended that the applicants/accused are innocent and have been falsely implicated in the instant case; that the alleged encounter

between the police and two armed accused persons was held, but none of the police personnel sustained any bullet injury except bullet mark on the police mobile; that the applicants/accused are not previous convict.

4. While referring the above submissions, learned DPG contended that the applicants/accused along with other his three companions had made straight firing upon the police party with deadly weapons, hence the provisions of Anti-Terrorism Act are attracted; that empties of pistols and pistols were recovered from the applicants/accused on the spot, which proved that the said encounter was held, however, he candidly submitted that previously the applicants/accused were not involved in any criminal case.

5. We have heard the learned counsel for the applicant/accused, learned DPG for the State and examined the material available on record.

6. Perusal of record emanates that the alleged encounter between the police and two accused armed with weapons was continued for so many minutes during midnight at Syed Mehmood Shah Road with the short distance between the parties, nevertheless, during the course of encounter, neither any accused nor any police personnel sustained any bullet injury and only few bullet marks were found on police mobile. In the present cases, the ingredient of Sections 353, 324, 427, 186 P.P.C. are yet to be determined at trial. Past record shows

that neither the applicants/accused were involved in any criminal case nor was convicted for any offence. Consequently, at the most the alleged incident is a case of ineffective firing and in these cases bail should be granted as a matter of right, as liberty of any person could not be curtailed mere on assumption and presumption, while he deserves for concession of bail on merits. Challan has been submitted and applicants/accused are no more required further for the purpose of investigation to the police and all the witnesses are police officials, thus there is no apprehension of tempering with the prosecution evidence.

7. Considering the above circumstances, the applicants/accused were succeeded to make out a case for grant of post-arrest bail on the ground of further enquiry as contemplated under Section 497 (2), Cr. P.C. and consequently instant bail application was allowed vide our short order dated 12.07.2018, whereby both the applicants/accused were granted bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) each and P.R. bond in the like amount to the satisfaction of the learned trial Court, in case based on FIR No.39/2018 under sections 353, 324, 427, 186/34, PPC r/w section 7 of ATA 1997, registered at Police Station Napier, Karachi South.

8. The observations made supra are tentative in nature and the learned trial Court shall decide the case strictly on merits.

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

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