

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.774 of 2018

Present:

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

Applicant : Maqbool S/o Sabir Bangali
through Mr. Altaf Hussain Khoso,
Advocate.

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

Date of Hearing : 18.07.2018

Date of Order : 18.07.2018

ORDER

AMJAD ALI SAHITO, J -- Through the instant bail application, applicant/accused Maqbool S/o Sabir Bangali seeks post-arrest bail in Crime No.745/2014 registered at Police Station KIA (East), Karachi, for the offence under sections 392, 353, 324/34, PPC, after his bail plea has been declined by the learned Anti-Terrorism Court-II & IInd Additional Session Judge, Karachi East, vide order dated 10.05.2018.

2. The brief facts of the prosecution case, as depicted in the FIR, is that on 02.10.2014 at about 1030 hours the complainant Tahir Ali lodged his report with Police Station KIA (East), Karachi, stating therein that he is residing on a rented house with (1) Ali Muhammad S/o Din Muhammad, (2) Saeed Hussain S/o Sagheer Hussain and (3) Waheed Ali S/o Muhammad Khan and

they all four persons are doing private job in MN Garments Factory situated at Sector 23 and they all at about 0900 hours were walking to their job and when at about 0915 hours reached at Ding Dong Hilal Factory Street, on motorcycle bearing registration No.KDG-6448 two bangali boys came and stopped them, one shown them a long barrel pistol and said them to handover the mobiles and cash, otherwise they will shoot them. They snatched mobile phones from Ali Muhammad and Saeed and during such stage Saeed protested and Ali Muhammad tried to apprehend the decoit, then one dacoit bite on the left hand of Ali Muhammad and the other pistol handed dacoit started firing on them with intention to kill them, but they were saved in such firing. During such incident, two police mobiles while patrolling reached at the place of incident and the police party tried to stop the firing of dacoits but the dacoits started firing on the police party and the police also made aerial firing, then the culprits/dacoits while continuing firing at the police left their motorcycle and tried to escape from the place of incident. The police then made straight firing upon the culprits and both the culprits sustained bullet injuries on their legs and they got down. Police apprehended the accused persons. From the possession of one accused, police officer whose name has been known to me as Muhammad Ramzan, one long pistol, one bullet in the magazine of pistol and one round in the chamber were recovered, who disclosed his name as Maqbool S/o Sabir Bangali and from the possession of other accused person, snatched mobile phones

were taken from his pocket. When asked about his name, he disclosed his name as Rafique S/o Rasheed Bangali and police officer asked about the licence of pistol from the accused Maqbool, who failed to produce the same. Police party after taking into the possession of pistol and snatched mobile phones prepared memo, then sealed the recovered pistol and mobile phones and the memo was read over to him then Ali Muhammad signed as witness and then came at PS alongwith accused persons and other police officials. The complainant reported to lodge the FIR against the culprits for snatching their mobile phones and on protest firing on them and for biting Ali Muhammad and for firing on the police party.

3. Learned counsel for the applicant/accused has contended that the applicant/accused is innocent and has been falsely implicated in the instant case; that nothing has been recovered from the possession of the applicant/accused; that the applicant/accused was arrested from the place of incident without assigning any reason and the alleged recovery has been foisted upon him; that the applicant/accused is not only entitled to grant of bail on merits but also on the statutory ground of delay in conclusion of his trial. Further, learned counsel contended that the applicant/accused is neither previous convict nor hardened, desperate and dangerous criminal. He lastly prayed for grant of bail.

4. Learned D.P.G. for the State has contended that the applicant/accused was arrested at the spot and the police

recovered robbed articles as well as crime weapon from his possession; that the applicant/accused is involved in a heinous crime with specific role, hence he is not entitled for the concession of bail, however, he candidly submitted that previously the applicant/accused was 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. Undisputedly, speedy and fast trial is the fundamental right of every accused person, the policy of Criminal Law is to bring accused person to justice as speedily as possible so that if he is found guilty he may be punished and if he is found innocent, he may be acquitted and discharged.

7. From the perusal of available record, it is evident that the applicant/accused was arrested on 02.10.2014 and since then he is in jail, but his trial has not been concluded. The progress report was called from the trial Court, which reflects that the charge against the applicant/accused was framed on 08.02.2018, but no progress has been made nor any witnesses has been examined by the prosecution as yet. Past record shows that neither the applicant/accused was involved in any criminal case nor was convicted for any offence. Even otherwise, at the most the alleged incident is a case of ineffective firing, as none amongst the members of the police party sustained any injury

in the firing alleged against applicant/accused. Challan has been submitted and the applicant/accused is no more required further for the purpose of investigation to the police. The applicant/accused is in a jail for the last two years without any tangible progress in the case before the trial Court and all the witnesses are police officials, therefore, there is no apprehension of tempering the prosecution evidence.

8. Considering the above circumstances, we are of the view that the applicant/ accused has succeeded to make out a case for grant of post-arrest bail and consequently the instant bail application was allowed vide our short order dated 18.07.2018, whereby the applicant/accused was granted bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lac only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

8. These are the reasons of the said short order dated 18.07.2018.

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

J U D G E

J U D G E