

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-531 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
<i>FOR HEARING.</i>	

08.09.2017.

Mr. Farhad Ali Abro, Advocate for applicants.
Mr. Shahid Ahmed Shaikh, D.P.G

ORDER

ABDUL MALIK GADDI, J:- Having remained un-successful in obtaining their release on bail from the Trial Court in Crime No.59 of 2017 registered at P.S Daulatpur, for offences under Section 324, 353, 398, 399, 402 PPC. Now the applicants/accused namely *Ghazi, Hakim Ali and Soomar, all sons of Meehoon Jatoi*, are seeking their release on bail through the instant bail application.

2. The facts of the prosecution case as narrated in the FIR are that on 10.06.2017 at 1700 hours, the complainant SIP Akhtar Hussain Solangi lodged the present FIR alleging therein that he alongwith his subordinate staff with arms and ammunition left the Police Station in a government vehicle for patrolling. During patrolling in various places, when they arrived at Village Muqem Dahri, received spy information defamed dacoits namely Ghazi Jatoi and Hakim Jatoi alongwith their companions armed with weapons are available at Mori of Kore Shakh with intention to commit offence. After such information, the police party proceeded to the pointed place and at about 1500 hours they reached at Mori of Kore Shakh, where five persons having weapons were available, who on seeing the police party took shelter of Shakh and started direct firing upon them. The police party in defence also took shelter of Shakh made defensive firing upon the accused party, however, such encounter continued for about 20 minutes and later on firing was stopped. Thereafter, the police party proceeded ahead and three persons surrendered before the police, while two accused persons made their escape good by taking advantage of sugarcane crop. On inquiry one accused person disclosed his name as Ghazi S/o Meehoon Jatoi and

from him a gun was recovered. The second accused person disclosed his name as Hakim Ali S/o Meehoon Jatoi and from him a repeater was recovered, while the third accused person disclosed his name as Soomar S/o Meehoon Jatoi and from him a revolver was recovered. All the accused were inquired about the license of the weapons but they failed to produce the same. The recovered property was sealed at the spot in presence of mashirs H.C Mubeen Ahmed Bughio and H.C Ghulam Nabi Korai. On inquiry about absconding accused, the apprehended persons disclosed their names as Jabbar S/o Umar Machi and Papoo S/o Lal Bux Machi. Thereafter, the accused were arrested at the spot and such memorandum of arrest and recovery was prepared in presence of mashirs. The accused were brought to Police Station, hence the present F.I.R lodged against the accused.

3. Learned Counsel for the applicants/accused *inter-alia* contended that the applicants/accused are innocent and they have been falsely implicated in this case with ulterior motives on the part of the police officials in order to show efficiency before the high-ups. He further submits that there are general type of allegations leveled against the applicants/accused and that there is violation of Section 103 Cr.P.C; that the place of incident is a populated area but no independent and respectable person from the place of incident has been associated as private mashir to witness the incident, whether the so-called incident occurred there or otherwise. Learned Counsel also submits that despite the encounter had taken place for about 20 minutes but nobody from the Police side received any injury and that all the witnesses are police officials and interested being subordinate of the complainant. He further submits that no any specific role or over act has been assigned to any of the applicants/accused in the FIR. It is also submitted that the applicants/accused have been involved in different crimes but in those crimes they have been acquitted by the Trial Courts vide judgments placed on record.

4. Learned Deputy Prosecutor General has vehemently opposed this bail application on the ground that the applicants/accused have been nominated in the FIR with specific allegation and they are hardened criminals. He also submits that applicants/accused have been arrested

vide supplementary challans in Crimes Nos.39/1991, 41/1991 and 38/1999.

5. I have given my anxious thoughts to the contentions raised at bar and have gone through the case papers so available before me.

6. It appears from the record that the alleged incident took place at Mori of Kore Shakh, which is stated to be a populated area and despite spy information no independent person of the locality has been associated as mashir to witness the incident and no plausible explanation has been furnished by the complainant party as to why they did not accompany any independent/private witness from the place of incident, which actually is clear violation of Section 103 Cr.P.C and it requires further inquiry within the contemplation of Section 497 Cr.P.C. The whole case of the prosecution rests upon the evidence of the police officials, therefore, no question does arise for tampering of their evidence at the hands of the applicants/accused, hence, the evidence of the police officials is required to be minutely scrutinized at the time of trial, whether the offence as alleged in the F.I.R is committed by the applicants/accused in a fashion as narrated by the complainant or otherwise. It is admitted position that the encounter had taken place for about 20 minutes but it is very surprising that none of the police officials received any injury during the said encounter, therefore, on this score false implication of the applicants/accused in this case cannot be ruled out. As per learned D.P.G that the applicants/accused are involved in the cases as referred to above, however, in those cases the accused have been acquitted vide judgments placed on record by learned Counsel for the applicants/accused. Furthermore, the weapons recovered from the applicants/accused were not sent to the ballistic expert, whether those were functional and used at the time of occurrence or otherwise, is yet to be determined at the trial, therefore, the prosecution story at this stage cannot be relied upon. The challan has been submitted against the applicants/accused before the competent Court of law and they are no more required for further investigation.

7. In view of what has been observed above, I am satisfied that on the basis of facts and circumstances of the case, the applicants/accused have succeeded in making out a reasonable case for grant of their bail. Accordingly, the applicants/accused are admitted on bail, subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) each and P.R Bonds in the like amount to the satisfaction of the Trial Court.

8. Needless to mention that the observations made in this bail order are tentative in nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of.

JUDGE

Shahid