

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-533 of 2017

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

08.09.2017.

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

ORDER

ABDUL MALIK GADDI, J:- Having remained un-successful in obtaining his release on bail from the Trial Court in Crime No.61 of 2017 registered at P.S Daulatpur, for offence under Section 23-A of Sindh Arms Act, 2013. Now the applicant/accused namely *Hakim Ali S/o Meehoon Jatoi* is seeking his 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 1730 hours, the complainant SIP Akhtar Hussain Solangi of Police Station Dolatpur lodged the present FIR alleging therein that accused Hakim Ali S/o Meehoon Jatoi committed the offences under Sections 324, 353, 398, 399, 402 PPC vide Crime No.59 of 2017 of P.S Dolatpur and during committing such offences he was found in possession of one un-licensed Repeater without number, hence, the present FIR lodged against the accused for offence under Section 23-A of Sindh Arms Act, 2013.

3. Learned Counsel for the applicant/accused *inter-alia* contended that this case is offshoot of F.I.R No.59 of 2017 in which the applicant/accused has been falsely implicated by the Police with ulterior motives in order to show efficiency before the high-ups. He further submits that there are general type of allegations leveled against the applicant/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 the present applicant/accused in the FIR. It is also submitted that the applicant/accused has been involved in different crimes but in those crimes he has been acquitted by the Trial Courts vide judgments placed on record. He further submits that the alleged weapon has been foisted upon the applicant/accused due to political rivalry.

4. Learned Deputy Prosecutor General has vehemently opposed this bail application on the ground that the applicant/accused has been nominated in the FIR with specific allegation and he is hardened criminal. He also submits that applicant/accused at the time of incident has been arrested with the subject weapon without license.

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 present FIR is offshoot of FIR No.59 of 2017 as 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 applicant/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 applicant/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 applicant/accused in this case cannot be ruled out. As per learned

D.P.G that the applicant/accused is involved in other cases, however, in those cases the accused has been acquitted vide judgments placed on record by learned Counsel for the applicant/accused. Furthermore, the weapon recovered from the applicant/accused was not sent to the ballistic expert, whether it was functional and used at the time of occurrence or otherwise, is yet to be determined at the trial, therefore, at this stage case of the applicant/accused requires further inquiry within the scope of Section 497 Cr.P.C. The challan has been submitted against the applicant/accused before the competent Court of law and he is 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 applicant/accused has succeeded in making out a reasonable case for grant of bail. Accordingly, the applicant/accused is admitted on bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and P.R Bond 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