

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Appln. No.S-463 of 2017

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

08.09.2017.

Mr. Pervaiz Tarique Tagar, 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.47 of 2017 registered at P.S B-Section Latifabad, Hyderabad, for offences under Sections 324, 353, 427, 412 and 34 PPC. Now the applicant/accused *Sahib Ali S/o Muhammad Khan* is seeking his release on bail through the instant bail application.

2. The facts of the prosecution case as disclosed in the FIR are that on 01.05.2017, the complainant alongwith subordinate staff left Police Station in a government vehicle, vide entry No.23 at about 1930 hours for patrolling within the jurisdiction. During patrolling, when reached at Bhitai Chowk to Bachao Band, where they saw three persons on motorcycle came from front side, who on seeing the police mobile tried to escape away but they were chased by the police party and during chasing two persons sitting at the back side of motorcycle issued straight fire upon the Police and in defence the Police party also fired and after such encounter two persons fell down after sustaining fire arm injuries, who were having pistols in their hands, while the third person succeeded in making his escape good due to darkness. The injured persons apprehended by the Police and secured pistol from them. On

inquiry, one accused disclosed his name as Muhammad Sharif S/o Muhammad Bachal, while the other accused disclosed his name as Sahib Ali S/o Muhammad Khan. The pistols recovered from them contained 3 and 2 live bullets respectively. On further inquiry about absconding accused, they disclosed his name as Zaheer S/o Abdul Latif. The accused were also inquired about the motorcycle recovered from them and disclosed that it is robbed property of Crime No.40 of 2017 under Section 392, 34 PPC. The accused also could not produce the license of recovered weapon nor any registration document of the motorcycle. Thereafter, the memo of arrest and recovery was prepared at the spot and the accused alongwith recovered property was brought at P.S B-Section Latifabad, Hyderabad, hence the aforesaid F.I.R lodged against the accused.

3. Learned Counsel for the applicant/accused *inter-alia* contended that the applicant/accused is innocent and he has been falsely implicated in this case with ulterior motives on the part of the police officials in order to show efficiency before the higher authorities. He further submits that there are general type of allegations leveled against the applicant 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 there has been associated as private mashir to witness the incident, whether the so-called incident occurred there or otherwise. Learned Counsel next submits that despite the encounter had taken place for a considerable time but nobody from the Police side received any injury and that all the witnesses are police officials and interested being subordinate of the complainant.

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; that at the time of incident the applicant/accused, who was armed with pistol, has made straight firing upon the Police party and in encounter the present applicant/accused received injury. He further submits that the applicant/accused is involved in as many as five other cases including the present case.

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 Bhattai Chowk to Bachao Band, which is stated to be a populated area and despite this fact no independent person of the locality has been associated as a mashir to witness the incident and no plausible explanation has been furnished by the complainant as to why he did not accompany any independent 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. There is also nothing on record to show that the applicant/accused is a previous convict or has been arrested in a case of similar nature in past. It is admitted position that the encounter had taken place for

considerable time but it is very surprising that none of the police officials received any injury during the said encounter. As per learned D.P.G that the applicant/accused is involved in five other cases except the present one, however, no detail of such cases has been furnished to shake my mind that he is a previous criminal, and if it is presumed that accused is involved in such criminal cases then merely pendency of the criminal cases, *ipso facto*, would not be sufficient to hold a person guilty of such crimes unless those are proved as held by the superior Courts. Furthermore, the weapon recovered from the 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, the prosecution story at this stage cannot be relied upon. 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 discussed 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

