

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Bail application No.S- 478 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

14.09.2017.

Mr. Inam Ali Malik Advocate for applicant/accused
Mr. Shahid Shaikh DPG

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ABDUL MAALIK GADDI, J: Having remained unsuccessful in obtaining his release on bail from the trial court in Crime No.68 of 2017 registered U/s 14 Foreigner Act, 1946 at police station Shahdadpur, now applicant/accused Muhammad Ibrahim Khan s/o Gul Khan is seeking his release on bail through instant bail application.

2 Brief facts of prosecution case as narrated in FIR are as under:-

“On behalf of the state complaint is that i left police station with staff in Government vehicle No.SPC-413 vide DD entry No.17 at about 18.10 hours as per the directions of the high ups for patrolling in the jurisdiction and as per National Action plan. Whilst patrolling from different places when at about 1900 hours we reached Tando Adam Naka Chowk Shahdadpur, whereon the headlight of the vehicle we saw one person was standing in suspicion condition, when said person saw we police party, started running in the meantime we alighted from the vehicle and with the help of staff apprehended said person and inquired about name, parentage caste and residence who disclosed his name Muhammad Ibrahim Khan s/o Gul Khan by caste Pathan, Resident of Kabul Afghanistan. His arrest was made accordingly and such body search of accused was also conducted but nothing was recovered. On demand from him about CNIC and passport visa, on which he disclosed that he has no, such mashirnama of arrest was made accordingly and thereafter the arrested accused under safe custody was brought at police station and such FIR is registered on behalf of the state”.

3- It is contended by learned counsel for applicant/accused that applicant/accused is not foreigner/Afghani but he is Pakistani national and has falsely been implicated in this case. Per learned counsel he is by birth Pakistani National and he has been issued birth certificate by the NADRA. He draws the attention of this court towards the birth certificate issued by the NADRA available in case file at page No.23. He further submits that whole the case of prosecution rest upon the evidence of police officials, no private witness has been cited. According to him, documentary evidence is available with the prosecution, thus no question arises for tampering the same at the hands of applicant.

4- Learned DPG has opposed this bail application on the ground that name of applicant/accused is appearing in the FIR. According to him this applicant/accused is not Pakistani and he has managed the birth certificate.

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

6- It is admitted position that case has been challaned, applicant/accused is no more required for investigation. The case of prosecution rests upon the evidence of police officials, therefore, no question does arise for tampering of their evidence at the hands of applicant/accused. Since whole the case of prosecution rests upon evidence of police officials, therefore, their evidence is required to be minutely scrutinized at the time of trial whether the offence as alleged in the FIR is committed by the applicant/accused in a fashion as narrated by the complainant or otherwise. I have perused the record showing that applicant/accused has birth certificate in his name issued by the NADRA which is on record at page No.23 of the case file. Not only this the CNIC of his father Gul Khan is also on record and it is yet to be determined at the time of trial whether this applicant/accused is Pakistani or otherwise. I have perused the case laws viz. Muhammad Mizan Vs. The State reported in 1997 MLD 279, Muhammad Yousuf Vs. The state reported in 1995 P.Cr.L.J page-1348. In these cases

almost same points of law were involved to that of the case of present applicant/accused in which accused persons were granted bail.

7- In view of above, the applicant/accused has made out a case for grant of bail, I accordingly allow this bail application and admit the applicant/accused on bail after his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and PR Bond in the like amount to the satisfaction of learned trial court.

8- Before parting with the order, I would like to make it clear that observations if any, made in this order, is tentative in nature and shall not affect the merits of the case.

JUDGE

A.Rasheed