

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Naimatullah Phulpoto

Mr. Justice Shamsuddin Abbasi

Crl. Bail Application No.630 of 2017

Crl. Bail Application No.631 of 2017

Sunny son of Rafiq Ahmed. Applicants

Versus

The State. Respondent

Applicant Through Mr. Abdul Irfan,
Advocate.

Respondent Through Mr. Muhammad Iqbal Awan,
DPG

Date of hearing 19.02.2018

ORDER

Shamsuddin Abbasi, J: Applicant/accused seeks bail in FIR No.336 of 2016 under Section 353, 324 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 and FIR No.337 of 2016 under Section 25(1) of Sindh Arms Act, 2013 registered at P.S. Taimuria, Karachi. Since both the aforesaid bail applications No.630 and 631 of 2017 are arising from the same incident/crime, therefore, we intend to dispose of both bail applications by this common order.

2. The brief of the prosecution case are that on 01.12.2016 police party of P.S. Taimuria, headed by ASI Muhammad Yousuf left police station for patrolling in the area. During patrolling when they reached at Main Shershah Soori Road, opposite Azeem Shah Bukhari Shrine, Sector 16/A, Buffer Zone, Karachi, two persons appeared on motorcycle in suspicious manner. Police party signaled them to stop, but instead of stopping they accelerated the speed of motorcycle and tried to run away, resulting police party chased them and on seeing police mobile behind them, the culprits alighted from motorcycle at

some distance and started firing upon the police party with intention to kill them as a result of which one bullet hit at the door of driver side of police mobile. Police fired in self defence. It is alleged that police apprehended accused in injured condition. Both accused had received fire arm injuries at their right legs. On inquiry, accused persons disclosed their names as (1) Sunny son of Rafiq and (2) Asim son of Sajid. ASI Muhammad Yousuf conducted their personal search in presence of mashirs. On personal search of accused Sunny, recovered one 30 bore unlicensed pistol without number, containing two live bullets in its magazine and on further search two mobile phones and one brown colour wallet containing cash of Rs.2,000/- and different cards were also recovered and from the personal search of accused Asim police recovered one 30 bore unlicensed pistol without number, containing one live bullet in its magazine, two mobile phones, one CNIC of Syed Mashood-ul-Hassan Abidi, driving license, visiting cards and cash of Rs.1,220/-. Police also seized the motorcycle bearing Registration No.KLI-6210 under Section 550 Cr.P.C. on which the accused person were riding as accused failed to produce it's documents. After their arrest they were brought at P.S. where two separate FIRs bearing Crimes Nos.336 of 2017 under Section 353, 324 & 34, PPC and FIR No.337 of 2017 under section 23(1)(a) of the Sindh Arms Act, 2013 were registered against the accused on behalf of the State.

3. After usual investigation the police submitted challan against accused before the learned Judge, Anti-Terrorism Court, Karachi, under the above referred sections.

4. The applicant/accused moved separate bail applications in aforesaid crimes/cases before the learned trial Court and both bail applications were dismissed vide common order dated 30.01.2017.

5. Learned counsel for the applicant contended that the applicant/accused is innocent and has been falsely implicated in this case. It is further contended that not a single injury was caused to the police officials in encounter. It is argued that police has caused fire arm injuries to both accused in police custody. It is argued that ocular evidence is contradictory to medical evidence. It is further argued that it was case of half-fry. Lastly, argued that the case against applicant/accused requires further inquiry.

6. On the other hand, learned DPG argued that applicant has been arrested at the scene of offence in an injured condition. Learned DPG opposed the applications.

7. Heard arguments of both the parties and perused the record.

8. Record reflects that as per FIR applicant and co-accused Asim both sustained firearm injuries on their right leg, but the medical certificate shows that applicant as well as co-accused Asim have sustained firearm injuries at their left leg. Apparently, ocular evidence is contradictory to medical evidence. Learned DPG could not explain the contradiction. Further, none from the police party had received firearm injury even scratch was not caused to police party. In such circumstances, application of section 324, PPC is yet to be determined at trial after recoding the evidence. The applicant/accused is in custody in injured condition since 01.12.2016. More than one year has passed, yet trial is not completed. All PWs are police personnel, apparently there is no

question of tampering with evidence. There are no reasonable grounds to believe that the applicant/accused has committed the alleged offence but there are sufficient grounds for further inquiry into his guilt. It is a well settled principle of law that benefit of doubt will go to the accused even at bail stage. Reliance is placed on the case of *Syed Amanullah Shah v The state* reported in PLD 1996 SC 241 in which Hon'ble Supreme Court has observed as under:-

“To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a guilty. Once an innocent is put under arrest, then he has to remain in jail for considerable time. Normally it takes two years to conclude the trial in a murder case. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises with regard to the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of benefit of bail. In such a situation, it would be better to keep an accused person on bail than in the jail, during the trial. Freedom of an individual is a precious right. Personal liberty granted by a Court of competent jurisdiction should not be snatched away from accused unless it becomes necessary to deprive him of his liberty under the law. Where story of prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into guilt of the accused”.

9. In view of the above, from the tentative assessment of the material available on record, we are of the considered view that prima facie case for grant of bail to the applicant/accused is made out. Case against applicant/accused requires further inquiry, therefore, concession of bail is extended to applicant/accused Sunny son of Rafiq Ahmed subject to furnishing solvent surety in the sum of

Rs.100,000/- (Rupees one hundred thousand only) in each case and P.R. Bond in the like amount to the satisfaction of trial Court.

10. Needless to mention here that the observations made herein above are tentative in nature and the trial Court shall not be influenced by the same while deciding the case(s) of the applicant/accused on merits.

11. Above are the reasons of our short order dated 19.02.2018, whereby the applicant/accused was admitted to bail.

JUDGE

JUDGE

Naeem