

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 35 of 2019

Present:

Mr. Justice Aftab Ahmad Gorar

Mr. Justice Amjad Ali Sahito

Applicant : Shahbaz @ Shani s/o Muhammad Ali
through Ms. Kiran Jehan, Advocate.

State : through Mr. Faheem Hussain,
Assistant Prosecutor General Sindh.

Date of Hearing : 15.01.2019

Date of Order : 15.01.2019

ORDER

AMJAD ALI SAHITO, J :- Through this instant bail application, the applicant/accused Shahbaz @ Shani seeks post-arrest bail in Crime No.148/2016 registered at Police Station Awami Colony, Karachi for offence under Section 23(i)A Sindh Arms Act, 2013, after his bail plea has been declined by the learned IInd Anti-Terrorism Court & Additional Sessions Judge, Karachi East vide order dated 20.02.2018.

2. Precisely, the relevant facts leading to disposal of the instant bail application are that with reference of Crime No. 147/2016 U/s 353/324/186/34 PPC arrested accused person namely Shahbaz @ Shani s/o Muhammad Ali and during his arrest, one TT Pistol 30 bore load magazine recovered from his possession and accused person failed to produce the license and this offence comes U/s 23(i)A Sindh Arms Act, 2013.

3. The applicant/accused was arrested and subsequently remanded in the judicial custody, the final report was submitted before the trial Court. The applicant/accused had moved bail

application before the learned trial Court i.e. IInd Special Sessions Judge (A.T.C.) East at Karachi, which was dismissed vide order dated 20.02.2018, hence he has impugned the order of the learned IInd Anti-Terrorism Court & Additional Sessions Judge, Karachi East dated 20.02.2018 before this Court.

4. Learned counsel for the applicant/accused, *inter-alia*, contended that the applicant/accused is innocent and has falsely been implicated in this case by the police; that the very arrest shown is in violation of section 23 of the Act, as there is nothing word to fulfill the provision as contended in sub-section (2) of section 23 of the Act, 2013; that the applicant/accused is neither hardened nor desperate criminal; that the alleged recovery has been foisted upon the applicant/accused; that all the witnesses are police officials and no independent witness was sighted as witness in the case which indicates that there is a violation of section 103 Cr.PC; that in main case the crime No. 147/2016 under Section 353/324/186/34 PPC of Police Station Awami Colony, the applicant/accused has been granted bail by this Court. He lastly prayed that the applicant/accused is in jail for the last two years and he is no more required for further investigation and prayed for grant of bail.

5. Learned APG for the State opposed for the grant of bail and supported the impugned order.

6. We have heard the learned counsel for the applicant/accused, learned APG for the State and examined the material available on record. It is an admitted fact that the applicant/accused has been granted bail in the main case bearing Crime No. 147/2016 U/s 353/324/186/34 of PS Awami Colony by this Court and the present

case being off-shoot of the same deserve to be released on bail on the ground for further inquiry. The case in hand regarding punishment has to be determined by the learned trial Court. In such like cases, whether accused would be liable to the maximum punishment as provided for the offence and also as to whether the punishment in the case of proof of guilt after trial in the circumstances would fall under the prohibitory clause are the questions, requiring further probe, the applicant/accused is in a jail for the last two years without any tangible progress in the trial Court and all the witnesses are police officials, therefore, there is no apprehension of tampering of prosecution evidence.

7. Considering the above circumstances, we are of the view that the applicant/accused has succeeded to make out a case of grant of post-arrest bail and consequently the instant bail application is allowed. The applicant/accused is granted bail subject to his furnishing solvent surety in the sum of Rs. 100,000 (one lac only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

8. The observations made supra are tentative in nature and the learned trial Court shall decide specifically on merits.

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