

Criminal Bail Application No.38 of 2019

Present: Mr. Justice Nazar Akbar

Versus

Date of decision : **14.01.2019**

ORDER

2. Brief facts as stated in the FIR are that on **19.07.2018** complainant ASI Nisar Ahmed was on patrolling duty alongwith PC Abdul Razzaq, PC Ghulam Abbas and PC Aurangzeb when at about 0245 hours they reached at band between Godam Chowrangi to Baloch Colony, they found three persons present there in suspicious condition who were coming from the side of Jam Sadiq Ali bridge on a motorcycle without having number plate. The complainant raised the hooter of official mobile but the said persons got confused and tried to flee from there by turning the motorcycle towards Bhaloch Colony band. The police party headed by the complainant chased those persons and also raised voices to them to stop. In the meanwhile, the person sitting in the last seat of motorcycle took out pistol and

opened straight fires upon police party in order to deter them from discharging their lawful duties as well as to commit their murder. Police party also fired in their self-defense on which the culprits stopped their bike and started running on foot while all of them continued firing and ran towards the Nadi. The police party, however, managed to apprehend two of the culprits while one of them escaped from the scene. The apprehended culprits disclosed their names as Saddam Hussain son of Abdul Hai and Atta Muhammad son of Ghulam Qadir (applicant herein) and they disclosed name of their absconding companion as Ali Raza son of Shahid. Complainant secured one 30 bore TT pistol alongwith loaded magazine containing one bullet and one bullet in chamber from personal search of accused Saddam Hussain and one 30 bore TT pistol alongwith loaded magazine and one bullet in chamber containing one bullet from the possession of accused Atta Muhammad, , therefore, FIR was lodged.

3. The counsel for applicant has contended that the applicant/ accused is innocent and has been falsely implicated by the police in the instant case. He further contended that it has nowhere mentioned in the FIR, memo of arrest and recovery and challan whether recovered weapons were sent for FSL and as such no FSL report of ballistic expert is available on record to ascertain finger print on it, which make the case of applicant/ accused for further inquiry. He prayed that the case of applicant/ accused does not fall under the prohibitory clause of Section 497 Cr.P.C, therefore, the applicant/ accused is entitled for grant of bail.

4. Conversely, Ms. Rahat Ahsan, Additional P.G for the State has vehemently opposed the bail application on the ground that the applicant/ accused has fired straight upon the police party with

intention to commit their murder and was arrested at the spot alongwith weapon, therefore, he is not entitled for concession bail.

5. I have considered the arguments advanced by the counsel for the parties and examined the contents of FIR and challan.

6. The very fact that the FIR was lodged on **19.7.2018** and till date no forensic report has been obtained by the parties, the presumption would be that it is still a case in which after more than 5 months the prosecution has not completed the basics of investigation to establish charge under **Section 23(i)(A)** of Sindh Arms Act, 213. All the witnesses are police officials who are interested party and yet FSL report is not available even in police papers. In these circumstances, detention of accused in Jail would not serve any purpose, therefore, I believe that enough material is available to admit the applicant/accused on bail.

7. In view of the above facts and circumstances, instant bail application is allowed. Applicant Atta Muhammad son of Ghulam Qadir is admitted to bail subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) and P.R bond in the like amount to the satisfaction of trial Court.

8. Needless, to mention here that the observations made hereinabove are tentative in nature and should not influence trial Court while deciding the case of the applicant/accused.

JUDGE

Ayaz Gul