

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. B.A No.272 of 2019

Date	Order with signature of Judge
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For hearing of bail case

30.05.2019

Mr. Muhammad Nizar Tanoli, advocate for the applicant.
Ms. Rahat Ahsan, Addl. P.G. Sindh.
Mr. Abdul Wahid Ansari, DPP, South Karachi.
SIP Arshad, P.S Nabi Bux, Karachi.

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Nazar Akbar.J.- This bail application has been filed after dismissal of bail by the trial Court on **07.2.2019**. The record shows that the accused was arrested in another FIR **No.38/2017** under **Section 23(I)(A)** of the Sindh Arms Act, 2013 and subsequently he was declared as one of the accused in the blind FIR No.116/2016, which was registered on **12.09.2016** six months before arrest of the accused. It is alleged that accused was identified after four days and identification shows in this very case the accused was driving a motorbike and there was no allegation of firing by the present accused on the victim. The accused in the case under **FIR No.38/2017** in which he was actually arrested has already been acquitted which definitely creates doubt in the prosecution story of his involvement in the blind FIR. It is settled law that even at bail stage doubts in the prosecution can be one of the grounds for grant of bail. Besides that learned counsel has relied on case reported as *Abid Ali @ Ali ..Vs.. The State* (**2001 SCMR 161**).

2. Frankly speaking in the above circumstances, I could have granted bail on the very first date of hearing before me i.e **12.04.2019**, however, when I came to know that an offence under **Section 23(I)(A)** Sindh Arms Act, 2013 was tried by some other Court, therefore, I had adjourned the matter only to ascertain that

under what circumstances, the cases triable by the Session Judge under **Section 23(I)(A)** Sindh Arms Act, 2013 are generally being tried by different Session Judge when the same accused is involved in an offence under **Section 302 PPC**. Invariably such anomaly creates doubts in favour of the accused party and on the ground of having been acquitted in the case under **Section 23(I)(A)** of the Sindh Arms Act, 2013, the possibility of acquittal in murder case is always enhanced. In the case in hand the difference is that the accused was not arrested in crime under Section 302 PPC and he was not even named in the said FIR, however, after 2/3 days of his arrest he was identified in the case under Section 302 PPC and despite the fact that the accused allegedly had confessed his involvement in the blind case in crime No.116/2016, the prosecution did not attempt to send the case under **Section 23(I)(A)** of the Sindh Arms Act, 2013 to be tried by the same Session Judge who was seized of murder case in crime No.116/2016. Now the position is that the on account of his acquittal so called involvement of the accused in FIR under Section 302 of the PPC has become very doubtful.

3. In view of the above, the applicant / accused is admitted to bail subject to furnishing solvent surety in the sum of **Rs.200,000/-** and P.R bond in the like amount to the satisfaction of trial Court.

4. However, before parting with this judgment since I have heard Madam Rahat Ahsan and Addl. P.G, and learned DPP, South Karachi who on instruction has placed before Court a statement showing details of proceedings in connected cases in which accused involved in murder case and cases under Section 23(1)A) of the Sindh Arms Act, 2013 are facing trial in different Courts. Learned DPP states at the bar that in all the cases in which accused are charged with offence under **Section 302** of the PPC as well as offence under **Section 23(1)(A)** are supposed to be tried by the same Session Judge

as in both case evidence is supposed to be common and weapon used in murder is to be identified and, therefore, at least possibility of judgment adversely reflecting on the other case can be curtailed. He has informed that in most of the cases applications have been filed for transfer the cases of accused facing trial under **Section 23(I)(A)** in one Court to the other Court where murder cases against the same accused are pending. In this context Ms. Rahat Ahsan, Addl. P.G has referred to the case law reported in 2010 SCMR 1785. The learned D.P.P is directed to follow the case law reported as *Nawaizish Ali and another ..Vs.. The State (2010 SCMR 1785)* wherein the Hon’ble Supreme Court while discussing provision of **Section 235 and 239** of the Cr.P.C has observed as follows:-

The provisions of sections 235 and 239 of the Code of Criminal Procedure are attracted to such cases that provide that if a single act or series of acts is of such a nature that it is doubtful each of the several offences, the facts which can be proved will render the accused liable to conviction for having committed all or any of such offences. Mere facts that the role of one or more of the accused person does not cover the entire series of events has to be considered by the trial Court in the evidence at the trial where each individual link of the chain of evidence has to be considered but it does not make out the ground for framing a separate charge. The trial under such circumstances attracts the provisions of section 239 (d), Cr.P.C reproduced as under:-

Section 239. What persons may be charged jointly. The following persons may be charged and tried together, namely.

- (a)*
- (b)*
- (c)*
- (d) “Persons accused of different offences committed in the course of the same transaction;”*
- (e)*
- (f)*
- (g)*

5. *In the case of Shah Nawaz v. The State (1968 SCMR 1379) it has been laid down that when two offences are obviously linked together, the second having been committed to cover the first. Both were*

complementary to each other and therefore, fell in the same series of acts which constituted two different offences. The principle is attracted to the facts of the present case involving trial for a charge with three distinct heads.

It is expected that since the learned DPP knows what is to be done to avoid conflicting judgment against the accused who is facing two trials for offences committed in the case of the same transaction. He should file within 15 days all applications and references and in future there shall always be a joint trial of the accused, who is being tried under **Section 302** of the P.P.C by one Session Judge and **Section 23(I)(A)** of the Sindh Arms Act, 2013 by some other Session Judge. Report should be submitted by the learned DPP for perusal in chamber after 15 days.

5. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits.

JUDGE

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