

THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.269 of 2020

**Present: Mr. Justice Abdul Maalik Gaddi
Justice Mrs. Rashida Asad**

Applicant : Mahmood Alam @ Grenade son of Maqsood Alam through Mr. Faiz Mohammad Awan, Advocate.
Complainant : None Present
Respondent : The State Through Mr. Abdullah Rajput, Deputy Prosecutor General Sindh
Date of hearing : 01.4.2020
Date of Order : 01.4.2020

ORDER

Abdul Maalik Gaddi, J. – Applicant/ accused namely Mahmood Alam @ Grenade involved in case FIR No.149/2019 dated 04.8.2019 under Sections 384, 385 and 386 PPC read with Section 7 Anti-Terrorism Act, 1997, Police Station Super Market, District Karachi (Central), after being refused concession of bail by the learned Special Judge, Anti-Terrorism Court No.III, Karachi, has come to this Court for same relief.

2. Facts of the case as per FIR dated 04.8.2019 of Police Station Super Market are that complainant is a vegetable vendor in Subzi Market adjacent to Apwa School Liaquatabad No.02. Accused Mahmood Alam @ Grenade belonging to MQM used to collect monthly Bhatta Rs.10,000/- from him by using the name of MQM by intimidating him. On 01.07.2019 accused Mahmood Alam took Bhatta of Rs.13,000/- and also issued threats of causing death of complainant if he did not increase the amount of Bhatta. The accused then went away by saying that he will come again in the month of August. The complainant has further alleged

in the FIR that he had become fed-up with the payments of Bhatta, hence this case.

3. Mr. Faiz Muhammad Awan, learned counsel for applicant has contended that case against the applicant is false and has been registered by the complainant due to malafide intention with the connivance of the police; that alleged incident took place on 01.7.2019 whereas FIR has been lodged on 04.8.2019 by complainant Muhammad Bashir after the delay of more than 01 month without any plausible explanation, therefore, he was of the view that in such circumstances, false implication of the applicant in this case with due deliberation could not be ruled out; that the complainant has not alleged that any force or weapon was used for demanding Bhatta, therefore, the requirement of ingredients of Section 7 are not fulfilled. It is contended that complainant has not placed on record any legal document for running business of vegetables from any authority; that the applicant/ accused is employee of Karachi Water & Sewerage Board (KWSB); that the applicant has been arrested on 04.8.2019 and he is in custody for the last more than 07 months, but the trial has not been concluded and it is yet to be determined whether the applicant is involved in this case or otherwise till then according to him case of applicant is required further inquiry.

4. Conversely, Mr. Abdullah Rajput, learned DPG has opposed this bail application and submitted that the applicant is involved in a case of collecting Bhatta from the complainant by intimidating in the name of MQM. He further submits that complainant has no enmity with the applicant and has directly charged the applicant for collecting Bhatta

from him, therefore, question of false implication of applicant in this case does not arise.

5. We have heard the learned counsel for parties at a considerable length and have perused the police paper so made available before us.

6. As per crime report, applicant used to take Bhatta from complainant putting him on fear on monthly basis; however, it is nowhere mentioned in FIR since how long he has been paying Bhatta to applicant. Not only this, crime report is also silent as to whether complainant had ever reported the matter to law enforcing agencies regarding collection of Bhatta and action against the applicant. Besides, it is alleged by complainant that last time applicant took Bhatta from complainant on 01.7.2019 but he reported the matter to the police on 04.8.2019 after delay of more than one month. No explanation has been furnished by complainant for non-reporting the alleged incident to police promptly. All these aspects of the case fall the case of the applicant within the purview of further inquiry as contemplated under Section 497(2) CrPC.

7. It is noted that applicant was not arrested red-handedly while committing alleged offence rather it has been shown that he was arrested on 04.8.2019 after more than one month of the alleged incident with Bhatta amount of Rs.5000/-. However, no particulars such as denomination and numerals of currency notes are given in the FIR.

8. Apart from above, record reflects that accused was arrested on 04.8.2019 and since then he is in custody and despite of framing of charge, out of nine witnesses, only complainant has been examined and

if the learned trial Court shall proceed the trial with such a speed, the same would not conclude in near future. It is also noted that case has been challaned and present applicant/ accused is no more required for custodial interrogation. In this backdrop, no useful purpose would be served by keeping the accused behind the bars. It is important to remember here that bail is not to be withheld as a punishment. Applicant is said to be in service of KWSB. Therefore, under these circumstances, the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

9. In view of the above, we have come to the conclusion that the applicant has made out a case for grant of bail and these are the detailed reasons of our short order of even date, which was in the following terms:

“Parties advocates have been heard at-length. They have concluded their arguments. For the reasons to be recorded later, instant criminal bail application is allowed. Resultantly, applicant/ accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and PR bonds in the like amount to the satisfaction of the trial Court. However, it is made clear that in case if during proceedings the applicant/ accused misuses the bail, then trial Court would be competent to cancel the bail of the applicant without making any reference to this Court.”

10. Needless to mention here that any observation herein above in this order is tentative in nature and shall not effect the merits of the case.

JUDGE

JUDGE