

THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Applications No.618 of 2020
Cr. Bail Applications No.619 of 2020
Cr. Bail Applications No.620 of 2020

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

1. Applicants in (1) Yousuf son of Khadim Hussain
(Cr. Bail Appln. (2) Ahmed son of Mehrab Gul
No.618/2020) :
 2. Applicant in Yousuf son of Khadim Hussain
(Cr. Bail Appln. :
No.619/2020)
 3. Applicant in Ahmed son of Mehrab Gul
(Cr. Bail Appln. :
No.620/2020)
Through Mr. Abdul Jalil Khan Marwat, Advocate.
- Respondent : The State through Mr. Hussain Bux Baloch,
Additional Prosecutor General Sindh along with
Complainant ASI Kamal Anwar PS New Karachi
Industrial Area, Karachi.
- Date of hearing : 20.5.2020
- Date of Order : 20.5.2020

ORDER

Abdul Maalik Gaddi, J. – By this common order, we intend to decide the above captioned bail applications, as they arise out of same incident as well as common impugned order dated 10.4.2020 passed by the learned Presiding Officer of the trial Court.

2. Through these bail applications, applicants/ accused seek post-arrest bail in Crimes No.490/2019, 491/2019 and 492/2019, under Sections 353/324/186/34, PPC read with Section 7 ATA, 1997 and under

Section 23(i)(a) of Sindh Arms Act, 2013, registered at police station New Karachi Industrial Area, Karachi.

3. Concisely, the facts as portrayed in the FIRs are that on 10.12.2019, at Abro Chowk, Khamisa Goth, Sector 5/F, New Karachi, some culprits being armed with deadly weapons were busy in selling chars (Narcotic Substance). In the meantime, at about 1800 hours Police party headed by ASI Kamal Anwar of PS NKIA, Karachi reached over there upon receiving spy information and the narcotics dealers on seeing the Police party made firing upon them with intention to commit their murder, so also deterred them from discharging their lawful duties during their official functions. In retaliation, Police party also fired back on the accused persons. Resultantly, one culprit sustained bullet injury on his right leg, below the knee. Thereafter, Police party apprehended two accused persons on the spot, whereas, their other two accomplices managed to flee away from the crime scene getting benefit of narrow lanes. On query, the injured culprit disclosed his name as to be Yousuf son of Khadim Hussain, whereas, the second apprehended culprit disclosed his name as to be Ahmedullah @ Ahmed son of Mehrab Gul. Thereafter, ASI Kamal Anwar made search of injured accused Yousuf and recovered a 30 bore Pistol along with loaded Magazine containing 03 live Rounds and 01 Round loaded in the chamber from his right hand. On his further personal search, Police also recovered 1208 grams of chars from right side pocket of his worn kameez including Cash of Rs.2500/- and one VGOTEL Mobile phone. Following which, Head of Police party made search of accused Ahmedullah @ Ahmed, which led to the recovery of a 30 bore Pistol along with loaded Magazine

containing 03 live Rounds and 01 Round loaded in the chamber from his right hand, whereas, his further personal search led to the recovery of 1206 grams of chars from his right side pocket including Cash of Rs.2600/- and one IC. Tide Mobile phone from his possession. Both the apprehended accused persons also disclosed the names of their absconding accomplices as to be Sartaj @ Tajoo son of Allah Dino and Ashfaq @ Gadha son of Mashooq Ali. According to the complainant, he also secured 02 empties of official SMG, 04 empties of 9 MM Pistol and 04 empties of 30 bore Pistol from the spot. Thereafter, complainant inquired from the apprehended accused persons regarding valid licenses of the recovered pistols, but they failed to produce the same. Accordingly, the Head of Police party sealed the recovered Pistols, live Rounds, crime empties including chars on the spot separately, whereas, the entire personal search articles of the accused persons were also taken into custody by the Police. The accused persons were then properly arrested on the spot, under a joint memo of arrest, recovery and seizure. The injured accused was taken to Abbasi Shaheed Hospital, Karachi for his medical treatment. Later on, Police party returned back to PS along with custody of accused persons, case property and Police papers. Following which, ASI Kamal Anwar registered FIR No.490/2019 under Section 353/324/186/34 PPC R/w 7 ATA, 1997 against the arrested accused persons as well as against absconding accused persons, whereas, he also lodged FIRs bearing No.491/2019 and 492/2019 under Section 23(i)A Sindh Arms Act, 2013 against the arrested accused persons, being the complainant on behalf of the State.

4. Mr. Abdul Jalil Khan Marwat, learned counsel for applicants/accused inter alia contended that applicants are innocent and have falsely been implicated in these cases by the complainant; that no such encounter took place as well as nothing was recovered from the possession of the applicants and the entire recovery has been foisted upon them by the Police; that due to firing, none of Police officials sustained bullet injury, nor walls including other property of the vicinity hit any bullet injury; that the charges leveled against the applicants do not fall within the ambit of Anti-Terrorism Act, 1997 and offences with which the applicants have been charged are bailable in nature; that the applicants have already been acquitted from the connected case crime No.493/2019 under Section 6/9-C of CNS Act, 1997, which makes the entire case of the prosecution doubtful, as all the recovery was seized under a joint memo; that the witnesses of the above case crime are similar in this case, who during their evidence in said case gave contradictory statements, as such, the learned I-Additional Sessions Judge acquitted them from charge of such case crime vide order dated 09.3.2020; that there is a sheer violence of Section 103 CrPC in this case, as the Police failed to associate any independent witness; that in this case all the PWs are Police officials, so there is no chance of tampering with the prosecution evidence, if the applicants are admitted on bail. Lastly he contended that under these circumstances, applicants are entitled for concession of bail.

5. On the other hand, Mr. Hussain Bux Baloch, learned Additional Prosecutor General Sindh vehemently opposed the grant of bail to the applicants; that the applicants are very much nominated in the FIRs and

their role is rightly assigned; that the applicants being armed with delay weapons having common intention in connivance with the absconding accused persons tried to commit Qatl-e-Amd of Police party to avoid their arrest, while they were busy selling chars by making fire shots, so also deterred them from discharging their lawful duties and official functions and also public at large; that applicants were arrested at the spot after the encounter and applicant yousuf also sustained bullet injury on his right leg, below knee cap and from their possession, Police also recovered unlicensed Pistols of 30 bore along with live Rounds; that FSL report in respect of recovered 30 bore Pistols, live Rounds and empties is very much available in Police File, which is positive and requires consideration. According to learned Additional Prosecutor General for the State, the Medical Record is also supporting to the case of the prosecution.

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

7. It appears from the record that cases have been challaned and present applicants are no more required for investigation. It is noted that the case in hand is of alleged encounter in between the parties with sophisticated weapons for a considerable time and at some distance, but during this alleged encounter surprisingly nobody has received any injury to the police officials, even police mobile has also not hit by any bullet from the applicant side. However, applicant Yousuf received injury at his right leg below the knee, which does not appeal to prudent mind. During the course of arguments, we have specifically asked the question from the learned Law Officer that when the encounter was

taken place at some distance then how applicant Yousuf received injury below his knee, he has no satisfactory answer with him.

8. It is also noted that incident took place in a populated area, despite of this fact no person from the locality or passerby from the road has been cited to witness the event, as such, this aspect of the case requires further enquiry in the matter whether the incident has taken place in a fashion as stated in FIR or otherwise. It is settled law that at the bail stage deeper appreciation of evidence cannot go into but a bird eye view is to be taken to available record before the Court to satisfy prima facie, whether the accused is/are connected with the commission of offence or not even otherwise benefit of doubt will go to the accused even at bail stage.

9. Apart from the above, it reveals from the record that besides weapons, 1208 and 1206 grams chars was recovered from the applicants respectively through common Mashirnama, which was prepared in this case and it has been brought on record that the applicants have been acquitted in the narcotic's case on the basis of same Mashirnama/ same set of evidence on 09.3.2020 in Special Case No.30/2020 of crime No.493/2019, this fact has not been disputed by the learned APG, therefore, on this ground also case of the applicants require further probe.

10. It is also noted that applicants were arrested on 10.12.2019 and since then they are in custody, almost five months have been expired in spite of framing of charge, no prosecution witness has been examined

and if the learned trial Court shall proceed the trial with such a speed, the same would not be concluded in near future.

11. We have noticed that under Section 19 (7) of Anti-Terrorism Act, 1997 provides that the Court shall on taking cognizance of a case proceed with the trial from day-to-day and shall decide the case within seven days, but in this case as observed above five months have been expired but case has not been concluded. It is observed that expeditious and fair trial is fundamental right of the accused as envisaged under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973. Delay in disposal of case and imparting justice can reduce the confidence of public in judicial system and would cause frustration and anguish. The object of criminal prosecution is not to punish under trial prisoners for alleged offence and accused could not be detained for an indefinite period without remedy of trial.

12. As observed above, case has been challaned and in this backdrop, no useful purpose would be served by keeping the applicants behind the bars. It is important to remember here that the bail is not to be withheld as a punishment. Nothing on record that present applicants are previous convict or they have remained indulge in any other identical case in past, 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.

13. In view of the above, we have come to the conclusion that applicants have made out their case for grant of bail and consequently we admit the applicants/ accused on bail subject to their furnishing solvent surety in the sum of Rs.30,000/- (Rupees Thirty Thousand Only), each applicant in each crime, in the like amount to the satisfaction of trial Court. Needless to mention here that any observations hereinabove in this order is tentative in nature and shall not effect the merits of the case.

14. Before parting with the order, we would like to make it clear that it is a case of Police encounter, therefore, learned Presiding Officer of the trial Court is directed to proceed these cases expeditiously and decide the same as per law and no unnecessary adjournment shall be granted to either side. Compliance report be submitted to this Court through MIT-II.

Office is directed to immediately send the copy of this order to trial Court for information and compliance.

JUDGE

JUDGE