

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No.1233 of 2021**

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*Date* *Order with signature of Judge*

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*For hearing of Bail Application.*

**24.08.2021**

Mr. Asadullah Memon, Advocate for the Applicant.  
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

**O R D E R**

**Muhammad Saleem Jessar, J:-** Through this bail application, Applicants Amanullah and Ghulam Shabbir seek their release on post arrest bail in Crime No.647/2021 of P.S Sachal, Karachi, under Section 353/324/34 PPC. The applicants preferred their bail plea before the first forum, which was turned down by means of order dated 08.05.2021; hence, they have approached to this Court through this Application.

2. The crux of the prosecution case as unfolded by complainant/ASI Sadaruddin of P.S Aziz Bhatti, are that they were busy in snap checking and during the proceedings they saw a white coloured Cultus car was coming which was signaled for checking but the inmates of the car instead of parking it tried to run away, who were followed and intercepted but the accused made straight fires upon the police party in order to deter them in performance of their lawful duties. The police party also retaliated in their defense; resultantly, a bullet hit to the tyre of car; however, inmates of the car attempted to flee away and during their fleeing away accused sustained firearm injury on his right arm and other sustained on his right leg, therefore, both accused were apprehended in an injured condition. On inquiry, they disclosed their names to be the present applicants. On their personal search, a 30 bore pistol along with magazine containing three live bullets was secured from accused Amanullah, who sustained injury on his right arm; whereas a 30 bore pistol without number was also secured along with magazine from accused Ghulam Shabbir, who sustained injury on his right leg. On inquiry, the weapons recovered from the accused were found unlicensed. To such effect, present FIR was lodged.

3. After registration of the case, the investigation was carried out by SIO. On 23.06.2021, challan was filed, which is still pending before 1<sup>st</sup> Civil Judge/Judicial Magistrate, for preliminary proceedings.

4. Learned counsel for the applicants submits that case against applicants is false and fabricated as both the accused were taken away by the complainant from Bhitai Colony and later they demanded huge amount as bribe, which the accused could not arrange, therefore, the complainant got them injured at police station by showing false and frivolous encounter with police; thereby, have made both applicants disable for rest of their life. He further submits that alleged car shown to have been recovered from the accused is not their own and it was also foisted upon accused aiming to strengthen the rope of their false case. He further submits that though the accused were allegedly having deadly weapons yet none from the police party sustained any scratch on their part except the bullet allegedly hit to their official vehicle, which according to learned counsel was also not caused by the accused and said vehicle was having such bullet mark prior to this incident. He further submits that applicants were fired at by the police at police station and no such encounter as alleged had ever occurred. As far as, recovery of alleged weapons is concerned, he submits that police have foisted said weapons upon them. He, therefore, submits that case against applicants requires further inquiry; hence, they may be enlarged on bail. In support of his contention, he has placed reliance upon the cases (i) *QURBAN ALI Versus The STATE* (2017 SCMR 279), (ii) *BABAR HUSSAIN Versus The STATE and another* (2020 SCMR 871), (iii) *JAVED Versus The STATE* (2016 P.Cr.L.J Note 54), (iv) *GHULAM ABBAS Versus The STATE* (2017 MLD 1535), (v) *ZAMEER AHMED Versus THE STATE* (2008 YLR 731), (vi) *MUHAMMAD ASLAM Versus THE STATE* (1997 P.Cr.L.J 1736).

5. On the other hand, learned Deputy P.G, Sindh appearing for the State, opposes the bail application on the ground that accused are not only nominated in the FIR but were apprehended on the spot after having an encounter with police and since they have sustained injury on their person, therefore, their presence has been established at the time of incident, hence, question of their departure from the encounter does not arise.

6. **Heard arguments, record perused.** It is admitted position of the record that during exchange of fires only the applicants were seriously injured and none from the police party sustained any injury or even a

scratch on their person, therefore, it cannot be conclusively hold that applicants are involved in any encounter. In this respect, reliance can be placed upon the case of *QURBAN ALI and another v. The STATE (2006 MLD 530)*. As far as, the alleged encounter is concerned, it could be determined by the trial Court after recording evidence of the parties mainly for the reason that surprisingly no scratch or any minor injury was caused by the accused to any of the police officials /officers during the alleged encounter. Reliance in this respect can be placed upon the cases of *Rab Nawaz v. The State (1990 SCMR 1085)*. Moreover, in such like case, the Divisional Bench of this Court has also granted post arrest bail to accused in the case reported as *2021 YLR843 (YOUSUF and another v. The STATE)* in which the accused also sustained bullet injury on his right leg. So far as, the list of different criminal cases as pointed out by learned Deputy P.G, Sindh is concerned, suffice it to say, at this stage, this Court is only seized of the instant bail application and effect of other criminal record against the accused is not relevant for declining bail of the accused in instant crime to the effect that there is mark of a question behind the alleged encounter which is to be resolved when evidence would come on record, since then confining of the accused behind the bars would not serve any fruitful purpose.

7. The upshot of above discussion is that applicants have made out a good prima facie case for their release on post arrest bail within the meaning of subsection 2 to section 497 Cr.P.C. Consequently, bail application in hand is hereby allowed. Applicants **(i) Amanullah son of Ghulam Mustafa and (ii) Ghulam Shabbir son of Muhammad Ismail**, shall be released on bail subject to furnishing their solvent surety in the sum of Rs.100,000/- (Rupees One Lac Only) each and PR Bond in the like amount to the satisfaction of learned trial Court/Judicial Magistrate concerned, as the case may be.

8. Needless to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicants, if they are found misusing the concession of bail.

9. This Criminal Bail Application is disposed of in the terms indicated above.

**JUDGE**