

**ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.**

Cr. B.A. No. D- 672 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For hearing.

Present:

**Mr. Justice Ghulam Sarwar Korai &
Mr. Justice Naimatullah Phulpoto.**

Mr. Muhammad Iqbal Mahar Advocate for applicant/accused.
Mr. Abdul Rehman Kolachi, APG for the State.

Date of hearing: 07.01.2014.

Date of announcement: 08.01.2014.

ORDER

Naimatullah Phulpoto, J; Applicant/accused Abdul Waheed alias Irfan seeks post arrest bail in Crime No. 30 of 2013, registered at Police Station, Agra, on 27.06.2013, under Sections 324, 353, PPC & 7 ATA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by Inspector Rahim Bux on behalf of State, are reproduced as under:

"On behalf of the State complaint is that today we along with constables each PC Hussain Bux, PC Shafique Jamro, PC Hot Khan, PC Ghulam Shabir, PC Javed Ahmed Khoro in uniform and being armed left P.S. in Government vehicle No.SP-31789 driven by DPC Ahsan Ali vide entry No. 4/27.6.2013 at 1000 hours for patrolling in jurisdiction. During patrolling when we reached near village Khalifa received information on mobile phone that abduction has been committed within jurisdiction of PS Sorah. As per direction we held Nakabandi at village Khalifa Pir Shaheed Badshah and parked mobile in western side in sugar cane crop. At 1100 hours, we saw four persons having TT pistols and one empty handed. We disclosed our identity and challenged them to

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surrender before police but they started direct firing upon us with intention to commit murder. We also fired in our defense and in order to release abductee. Firing continued for 10 minutes and thereafter stopped from the accused's side and one person while crying came towards us. We encircled the accused and arrested one accused along with TT pistol and inquired his name and parentage who disclosed his name as Ahmed Bux alias Bakhat alias Bakho son of Abdullah Jamro r/o Jhando Shakh, we took TT pistol in police possession and unloaded the same. The magazine was empty and from further search of accused recovered one magazine, 5 bullets, one Nokia mobile phone. We inquired from accused about license of TT pistol who disclosed the same to be unlicensed, we inquired from empty handed person who disclosed his name as Abdul Razaq s/o Mohammad Ismail Khaskheli, r/o Shadi Khan Mallah and recovered PS copy of his CNIC who disclosed that on 26.6.2013, I was returning from village to Mir Wah with some work and when reached near alone grave near Sorah accused, namely, Ahmed Bux alias Bakhat alias Bakho Jamro, 2.Waheed alias Irfan Shar and two unidentified accused who have seen very well and would identify them on seeing again had abducted me and today dacoits were shifting me from one place to an other place and the encounter between you police and dacoit took place and three accused have left me in sugar cane crop and ran away. Thereafter, we inquired through telephone and in crime No. 64/13 P.S. Sorah u/s 365-A, 392 arrested accused Ahmed Bux alias Bakhat alias Bakho a/w TT pistol two magazine and five bullets and recover the abductee Abdul Razaq and prepared mashirnama with signatures of PC Hussain Bux and PC Ghulam Shabir Tunio. Thereafter we along with abductee Abdul RAzaq and arrested accused Ahmed Bux alias Bakhat alias Bakho Jamro came at PS and register the case against above named accused. During encounter I fired 20 bullets from Govt. SMG rifle, the remaining staff shall give the detail of bullets in their respective statements".

3. After usual investigation challan was submitted against the accused for the above referred sections.

4. Bail application was moved on behalf of applicant/accused, same was rejected by learned Judge, ATC, Khairpur vide order dated 27.11.2013. Thereafter, the applicant/accused approached this court.

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5. Mr. Mohammad Iqbal Mahar, learned Counsel for applicant/accused mainly contended that as per FIR there was encounter between police and accused which continued for 10 minutes, but none received injury from either side. He further submitted that ingredients of section 324 PPC are not attracted in this case. It also argued that section 7 ATA, 1997 has also been misapplied in this case. He also argued that abductee Abdul Razaq has filed affidavit in this case and has belied the encounter and his recovery by the police. It is further contended that the applicant/accused is a student and he was tender age at the time of incident. Lastly, he argued that prosecution story is highly doubtful and prosecution case requires further inquiry. In support of his contentions, he relied upon case reported as Syed Khalid Hussain Shah v. State and another, *PLJ 2013 SC 874*.

6. Learned APG argued that this is a case of encounter, during investigation sufficient material has been collected against the applicant/accused to connect him in this case. He further argued that tender age is no ground for grant of bail. Lastly, he contended that mere filing of affidavit by abductee Abdul Razaq in the case, will not create doubt in the prosecution case. He opposed the bail application.

7. Record reflects that there was encounter in between police and accused persons for about 10 minutes, but none from either side sustained a single injury. Even police mobile was not hit by any bullet. In these circumstances, application of section 324 PPC is yet to be determined by the trial court. It has also been argued that the applicant/accused is a student and this fact has not been controverted by learned APG. The applicant/accused has been granted bail in main case bearing crime No. 64 of 2013 of P.S. Sorah, under sections 365-A, 392, PPC & 7 ATA, 1997. According to prosecution case, in the result of encounter abductee Abdul Razaq was recovered but said Abdul Razak has filed affidavit in the case and belied/contradicted prosecution story. Affidavit of abductee Abdul Razak has created reasonable doubt with regard

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to participation of applicant/accused in crime. Applicant/accused cannot be deprived of bail in such a situation and case of the applicant/accused prima facie, requires further enquiry as contemplated under subsection (2) of section 497 Cr.P.C. Therefore, concession of bail is extended to the applicant/accused subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees one lac) and PR bond in the like amount to the satisfaction of trial Court.

8. Needless to say, observations made hereinabove are tentative in nature. The trial court shall not be influenced by such observations while deciding the case on merits.

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