ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1259 of 2024
(***re-Kamran @ Wago v The State)***

Criminal Bail Application No.1260 of 2024
(re-Kamran @ Wago v The State)

Date	Order with signature of Judge

For hearing of bail application

Date of hearing and Order:- 15.07.2024

M/s. Shah Imroz Khan and Azeem Shah advocate for the applicant
Mr. Khadim Hussain Khunharo APG

O R D E R

Adnan-ul-Karim Memon, J:- Through these bail applications under Section 497 Cr.P.C., the applicant Kamran @ Wago has sought admission to post-arrest bail in F.I.R No. 188/2024, registered under Section 353/324/186/34 PPC and F.I.R No. 189/2024 under section 23-(i)-A of Sindh Arms Act,2013 of Police Station PIB Colony.

2. The earlier bail plea of the applicant has been declined by the learned IVth Additional Sessions Judge Karachi (East) vide orders dated 23.05.2024 in Criminal Bail Application No.2404/2024 and Criminal Bail Application No.2405/2024, on the premise that in the police encounter the applicant sustained bullet injury, if there would have been a little malafide on the part of police then other accused would have also sustained bullet injury, but as per record he didn't, as such. The active involvement of the present accused in the instant crime cannot be ruled out. Moreover, the accused is also involved in the recovery of unlicensed weapons. So much so that he also possessed a previous criminal history.

3. It is inter-alia contended that the applicant is innocent and falsely implicated in this case; that police showed a fake encounter in which none of the police sustained an injury therefore the offences with which the applicant has been charged did not come within the prohibitory clause of Section 497 Cr.P.C. He next contended that the applicant after arrest is behind bars and thus is no longer required for further investigation. He lastly prayed for allowing the bail application.

4. Learned APG has opposed the application and states that the learned trial Court has rightly dismissed the bail plea of the applicant and the applicant does not deserve the concession of post-arrest bail. He added

that the accusation against the applicant is well founded, and the prayer of the applicant for the grant of post-arrest bail is liable to be dismissed.

5. I have heard learned counsel for the parties and with their assistance examined the documents available on record.

6. As per FIR police officials were at a very close distance and nobody from the police personnel received any injury; only the applicant has received injuries. If this fact is believed then it can easily be said that this case is of ineffective firing on the part of the applicant.

7. Perusal of the final medical report reflects that the applicant sustained firearm injuries on the lower part of his leg. There is no criminal record to show that the applicant was previously convicted in any criminal case. Admittedly, the investigation has been completed and the applicant is no longer required for further investigation, therefore, his further detention will not serve any useful purpose. Moreover, the applicant has been behind bars since his arrest but the prosecution has failed to examine a single witness to substantiate the charge against the applicant. It is significant to mention that all the witnesses are police officials and it was not difficult for the prosecution to procure their attendance. There is no apprehension of tampering with the evidence as all PWs are police officials.

8. The offense under section 353, P.P.C. is bailable and punishable for 2 years or a fine. As far as section 324 PPC is concerned, in an attempt to murder case falling within the ambit of section 324, P.P.C., the nature of the act done, the intention of the offender and the circumstances leading to the occurrence are the essential ingredients, which need to be probed into determine the guilt or otherwise of an accused as the police officials have not sustained any injury on their body. As such the subject offenses do not fall within the prohibitory clause of section 497 (1) Cr.P.C. However to ascertain the offense for an attempt to murder the police officials, and bullet injuries sustained by the accused on the lower part of his leg requires serious consideration and further probe as none of the police personnel sustained any injury, and it is for the learned trial Court to thresh out the truth after recording the evidence being adduced by the prosecution and defense during trial.

9. The accused could not be deprived of the concession of bail merely on the ground that he sustained injuries during the alleged encounter with the police where no police personnel sustained any injuries being available at close distance.

10. To deprive a person of his freedom is most serious. It is judiciously recognized that unfortunately there is a tendency to involve the innocents with a pang of guilt. Once an innocent is put under arrest, then he has to remain in jail for a considerable time. Normally it takes some years to conclude the trial. Ultimate conviction and incarceration of a guilty person can repair the wrong caused by the mistaken relief of interim bail granted to him but damage to an innocent person caused by arresting him, though ultimately acquitted, would be always beyond repair. So whenever reasonable doubt arises about the participation of an accused person in the crime or about the truth/probability of the prosecution case and the evidence proposed to be produced in support of the charge, the accused should not be deprived of the benefit of bail. In such a situation, it would be better to keep an accused person on bail than in jail, during the trial. Freedom of an individual is a precious right. Where the story of the prosecution does not appear to be probable, bail may be granted so that further inquiry may be made into the guilt of the accused.

11. It is alleged in the FIR that a pistol was in his hand and the Police arrived at the place of the incident to arrest the applicant but no private/independent person was associated to witness the arrest and recovery which too created some doubt in the story as set up by the prosecution in the FIR.

12. In a recent case; namely, *Ayaz Ali V/S The State*, ***PLD 2014 Sindh 282***, after examining and comparing Sections 23(1)(a) and 24 of the Act, it was held by a learned single Judge of this Court that Sub-Section 1(a) of Section 23 of the Act deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act (i.e. 'license for acquisition and possession of firearms and ammunition'); and whereas, Section 24 of the Act provides punishment for possessing arms or ammunition, licensed or unlicensed, to use the same for any unlawful purpose. It was further held that since a maximum punishment of up to 14 years is provided in Section 23(1)(a) and Section 24 provides a punishment of up to 10 years, the maximum punishment in the case of recovery of a pistol, which falls within the definition of "arms" in terms of Section 2 of the Act, will be 10 years under Section 24 of the Act. It was also held that the question of the quantum of punishment has to be determined by the trial Court as to whether the accused would be liable to maximum punishment or not, and in case of his conviction, whether his case would fall under the prohibitory clause or not. It was observed in the cited case that all the witnesses were admittedly police officials, and the accused was no more required for further investigation.

13. In view of the above observations and findings, it was held *inter alia* that the case was that of further inquiry, and accordingly bail was granted. In a more recent case ; namely, Criminal Bail Application No.1010/2014 (*Muhammad Shafique V/S The State*) decided by this Court on 11.07.2014, with the observation that the terms "arms" and "firearms" have been separately and distinctly defined in Clauses (c) and (d), respectively, of Section 2 of the Act ; amongst many other articles designed as weapons of offence or defence, "pistols" are included in the definition of "arms" in Clause (c) *ibid* and not in the definition of "firearms" defined in Clause (d) *ibid* ; the punishment and penalty for acquiring, possessing, carrying or controlling any "firearm" or ammunition in infringement of Section 3 of the Act, is provided in Section 23(1)(a) of the Act, which is imprisonment for a term which may extend to 14 years and with fine ; and, whereas, the punishment for possessing "arms" or ammunition, licensed or unlicensed, with the aim to use them for any unlawful purpose etc., is provided in Section 24 of the Act, which is imprisonment for a term which may extend to 10 years and with a fine.

14. This Court in the aforementioned case held that the above clearly shows the intention of the legislature that not only are the offenses concerning "arms" and those relating to "firearms" to be dealt with separately as provided in the Act; but since punishments having different terms in respect of "arms" and "firearms" have been specified separately in the Act, punishment under Section 23(1)(a) of the Act cannot be awarded for an offense committed under Section 24 of the Act, and vice versa.

15. As observed above, amongst many other articles designed as weapons of offense or defense, "pistols" are included in the definition of "arms" in Clause (c) *ibid* and not in the definition of "firearms" defined in Clause (d) *ibid*. Adverting to the facts of the present case, the prosecution has alleged that one 30-bore pistol was recovered from the applicant, but he was booked and has been challaned under Section 23(1)(a) of the Act, which applies to "firearm or ammunition" and not to "arms". It will be for the trial Court to decide as to whether the provisions of Section 23(1)(a) *ibid* will apply to the applicant's case or not.

16. It is an admitted position that all the witnesses are police officers and no attempt was made by them to search for independent witness(s) although the applicant was arrested and the place of arrest was a common thoroughfare. Since the investigation has been completed and challan has been submitted before the trial Court in the subject case, the applicant will

not be required for any further investigation. In such circumstances, there is no possibility of tampering in the case of the prosecution by the applicant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense at the time of the trial; and, the trial Court shall have to decide whether the case of the applicant falls within the ambit of Section 23(1)(a) of the Act or not.

17. In view of the above discussion, this is a case that requires further inquiry in my humble opinion, and I am convinced that the applicant has made a case for the grant of bail.

18. Resultantly these Bail applications are allowed and bail is granted to the applicant in F.I.R No. 188/2024, registered under Section 353/324/186/34 PPC and F.I.R No. 189/2024 under section 23-(i)-A of Sindh Arms Act, 2013 of Police Station PIB Colony, subject to his furnishing solvent surety in the sum of Rs. 100,000/= (one lac) in both the cases and the PR bond in the like amount to the satisfaction of the trial court.

19. The observations made hereinabove are tentative only to decide the instant bail applications, which shall not in any manner influence the learned Trial Court at the time of the final decision of the subject cases.

JUDGE

Shafi