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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Crl. B.A No. S - 220 of 2012

Date	Order with signature of the Judge
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1. For orders on M.A No. 1205/2012 (U/A).
2. For orders on M.A No. 1206/2012 (E/A).
3. For hearing _____

25.07.2012

Mr. Saleem Raza Jakhar, advocate for applicant
Mr. Imtiaz Ahmed Shahani, State counsel.

NAIMATULLAH PHULPHOTO, J:- Applicant/accused Naseer Mugheri applied for bail after arrest before the court of learned Sessions Judge Kamber-Shahdadkot in crime No. 76/2011 registered against accused at Police Station Mahi Makol for offences under Sections 324, 353, 148, 149, 344, PPC.

2. Brief facts of the prosecution case as disclosed in the F.I.R are that on 21.12.2011 Inspector Mumtaz Ali Janwari SHO Police Station Mahi Makol left Police Station along with his subordinate staff for patrolling duty. SHO received spy information that notorious dacoit Doso alias Dost Mohammad along with his companions was shifting abductee Faizan Hakro towards Balochistan Province. On such information, SHO reached at Jaro Curve on Kamber Mirokhan road and held nakabandi at 0530 hours and saw 12 accused persons appeared there who were identified by ASI Munawar Ali. Accused Dost Mohammad was carrying Klashnikov and remaining accused were also armed with deadly weapons. Police challenged the accused to surrender but the accused did not surrender and started firing upon police. The police retaliated firing in their defence. Cross firing continued for about 9/10 minutes. Thereafter police encircled accused and succeeded to catch hold of two accused persons. One was armed with K.K and another was empty handed. Accused, on enquiry, disclosed his name as Ahmedo alias Ahmed Khan s/o Faiz Mohammad and present accused disclosed his name as Naseer s/o Dalel Khan Mugheri. From his possession one unlicensed repeater

was recovered. It is further alleged in the F.I.R. that police saw one person namely Muhammad Hassan at the place of encounter who stated that 27/28 days back he was kidnapped for ransom by the accused persons and they were shifting him to Balochistan. F.I.R. of the incidents was lodged against the above name accused under the above referred sections and after usual investigation challan was submitted before the Competent Court.

3. Mr. Saleem Raza Jakhar, learned counsel for the applicant contended that despite cross firing with the sophisticated weapons no one received injury from either side. No private person from surrounding was attracted to scene of offence. Prosecution story on the face of it appear to be unnatural and unbelievable. No F.I.R. regarding abduction of Muhammad Hassan has been brought on the record. Police has misapplied section 324 PPC. The case against the applicant requires further inquiry. He has placed reliance on the case of Munwar v. The State, 2011 YLR 1185 (Kar).

4. Mr. Imtiaz Ahmed Shahani, appearing on behalf of the State opposed the application mainly on the ground that one Muhammd Hassan abducted for ransom was recovered from the possession of the accused at the time of his shifting to Balochistan and alleged offence falls within prohibitory clause of section 497 Cr.P.C.

5. I am inclined to grant bail to applicant Naseer for the reasons that prosecution story prima-facie appears to be unnatural and unbelievable. Despite cross firing with the sophisticated weapons no one received injury during the encounter. F.I.R regarding abduction of Muhammad Hassan has also not been placed on record, crime weapon recovered from the accused was not sent to the Ballistic Expert for report. All the PWs are police officials, therefore, there is no question of tampering with the evidence. Applicant is no more required for investigation. Learned counsel for the applicant has rightly relied upon the case of Munawar (Supra) wherein it was held as under:-

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"I have heard the arguments of the learned counsel for the applicant and learned A.P.G. for the State and have perused the record. It is settled law that at the bail stage evidence cannot be appreciated and only bird-eye view is to be kept on record just to find out as to whether the present applicant is connected with the commission of alleged offence or not. From the reading of F.I.R. it appears that the allegations made therein are general in nature and no specific role whatsoever has been assigned to the present applicant. In the circumstances I am of the view that the case falls within the ambit of section 497 (2), Cr.P.C. calling for further enquiry at the trial.

Accordingly I allow this application and admit the applicant to bail. He shall be released on bail subject to his furnishing a solvent surety in the sum of Rs.200,000 (Rs.Two lac) only and P.R. bond in the like amount to the satisfaction of the learned trial Court."

6. For my above stated reasons and while respectfully relying upon the above said authority I have no hesitation to hold that case against applicant falls within ambit of Section 497 (2), Cr.P.C calling for further enquiry at trial. Accordingly, I allow the bail application and admit the applicant to bail subject to furnishing solvent surety in the sum of Rs.200,000/- and P.R bond in the like amount to the satisfaction of the learned trial Court.


25.7.2012

Judge