

99

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. D- 75 of 2012.

Date of hearing	Order with signature of Judge
06.02.2013.	

Mr. Rashid Mustafa Solangi, Advocate for the applicant.
Mr. Shabir Hassan Shah, State Counsel.

~~~~~

**Syed Muhammad Farooq Shah, J:** The applicant Ameen Brohi who is booked in F.I.R No.11/2012, under Sections 302, 324, 353, 440, 337-F (i), 148, 149 P.P.C, and 6/7 of Anti Terrorism Act, 1997, registered at P.S B-Section Shahdadkot; seeks bail from this Court on the facts and grounds set forth in the captioned application. Earlier, bail application preferred before the trial Court was culminated by dismissal order dated 15.10.2012.

2. Succinct story of the prosecution case as alleged in the F.I.R lodged by complainant Inspector Karim Bakhsh on 14.2.2012 is that complainant was busy in patrolling alongwith his staff when received spy information about presence of some wanted persons, he rushed at the pointed place and saw two persons including Rasool Bux Seelro armed with Kalashnikovs on motorcycle and three unknown persons armed with Kalashnikovs were also found on another motorcycle. They challenged the police party and started direct firing upon them. The police also fired in their defence upon the culprits. The encounter was continued for about ten minutes and thereafter accused persons succeeded to escape from the place of occurrence. It is alleged that complainant Inspector Karim Bux received firearm injury on his elbow and H.C Zakauallah had received firearm injury on his face and other parts of body and was lying dead; P.C driver Rehmatullah Leghari received firearm injury on his right arm. They recovered the motorcycle of accused persons and prepared necessary memo of place of occurrence in presence of P.C Muhammad Arshad and driver P.C Rehmatullah. On completion of usual legal formalities and investigation the police charge sheeted the accused persons, wherein name of the present applicant was shown as absconder alongwith three others, while accused Muhammad Ali son of Lal Bakhsh was shown in custody.

Dr.  
1  
06/2/2013

9

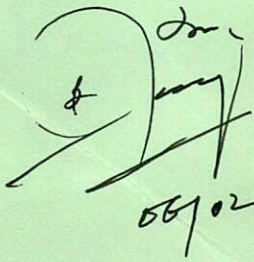
3. Learned counsel for the applicant vehemently submitted that P.C Driver Rehmatullah and complainant have been shown injured in F.I.R, while in memo of occurrence only P.C Rehmatullah was shown as injured. Learned counsel contends that on the same day the applicant/accused has been involved by the prosecution witnesses in their statements recorded under Section 161 Cr.P.C without any plausible explanation and sufficient cause of not narrating his name in the F.I.R and in memo of occurrence, those documents were prepared just few hours before recording the statements of prosecution witnesses under Section 161 Cr.P.C. Learned counsel urged that in view of the admitted fact that the name of applicant/accused did not mention in the F.I.R; neither his identification test was held, nor his name appears in memo of place of occurrence, therefore, in light of the dictum as laid down in the case of Muhammad Rafique v. The State reported in 1997 S C M R 412, and case of Abid Ali alias Ali v. The State (2011 S C M R 161), whereby the Hon'ble apex Court admitted the accused persons on bail.

4. Conversely, learned State counsel opposes grant of bail to the applicant/accused, but he was found unable to counter the admitted facts commenced as supra and the case law cited by the learned counsel for applicant as well.

5. Perusal of record transpires that the applicant/accused has not been named in the F.I.R, nor his identification has been conducted. His name has also not been shown in the memo of place of occurrence. It is also an admitted fact that no recovery whatsoever has been affected from possession of the applicant/accused.

6. In case of Muhammad Rafique v. The State reported as 1997 SCMR 412, the Hon'ble Supreme Court of Pakistan held that **"it has not come on record, as to why identification test of the petitioner through eyewitnesses was not held when his name did not appear in the F.I.R."** In such circumstances the Hon'ble Apex Court granted bail to the applicant/ accused.

7. In another case of Abid Ali alias Ali (2011 S C M R 161), the Hon'ble Supreme Court of Pakistan held that **when the applicant/accused was not**

  
06/02/2013

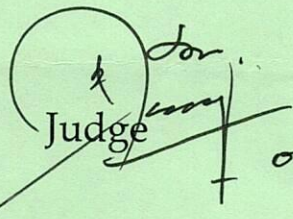
23

list

nominated in the F.I.R and his name was included in the list of accused in supplementary statement, without any explanation, therefore, the case of accused fell under the category of further enquiry covered under the provisions of Section 497 Cr.P.C, then it had become right of the accused that he be released on bail.

8. Foregoing are the reasons of our short order dictated earlier in the Court today, whereby the applicant/accused was admitted to bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Three hundred thousands) and P.R bond in the like amount to the satisfaction of trial Court.

  
Judge

  
Judge  
06/24/2013