

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

(1) 1st CrI. Bail Appln. No. S - 556 of 2024

Applicants : Abdul Nabi Chachar & another, through Mr. Abdul Ghani Bijarani, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

(2) 1st CrI. Bail Appln. No. S - 555 of 2024

Applicant : Qasim Chachar, through Mr. Abdul Ghani Bijarani, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

(3) 1st CrI. Bail Appln. No. S - 557 of 2024

Applicant : Abdul Nabi Chachar, through Mr. Abdul Ghani Bijarani, Advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing : 22.10.2024.

Date of Order : 22.10.2024.

O R D E R

ARBAB ALI HAKRO, J.- The above three criminal bail applications are inter connected with each other, as Cr. Bail Application No.S-556/2024 is the outcome of main case; whereas, the other two are the offshoot of the same; therefore, all these bail applications are being decided by this common order.

2. Applicants Abdul Nabi son of Ghulam Rasool and Qasim son of Jameel Ahmed, both by caste Chachar, seek post-arrest bail in crime No.97 of 2024, registered at Police Station Karampur, District Kashmore at Kandhkot, for offence under Sections 324, 353, 399, 402, 148, 149, PPC; whereas, applicant Qasim Chachar also seeks bail in Crime No.99/2024 and applicant Abdul Nabi Chachar seeks bail in Crime No.98/2024, both registered at the same police station for offence u/s 23(i)(a) & 25 of Sindh Arms Act, 2013. Their post arrest

bail applications in the above crimes were dismissed by the learned Sessions Judge, Kashmore at Kandhkot vide separate orders dated 19.9.2024.

2. The prosecution case, in brief, is that on 11-08-2024, at about 0630 hours, a police party led by HC Muhammad Ayoub Kakepoto being on patrolling, spotted the present applicants along with 04 unknown accomplices, armed with guns, Kalashnikov and TT Pistols, on a tip-off, near Sher Muhammad Bijarani diversion on the link road leading from Karampur to Magsi, and on being challenged by the police to surrender there occurred an encounter between the police and the dacoits, which lasted for about 15 minutes, whereafter the police succeeded in arresting the applicants/accused Abdul Nabi and Qasim along with unlicensed T.T. Pistols, whereas the other culprits made their escape good. After carrying out the necessary formalities at the spot, the police party returned to the police station, where the complainant registered such FIRs against the applicants on behalf of the State.

3. Heard learned counsel for the applicants as well as learned DPG for the State and perused the record.

4. Learned counsel for the applicants has mainly argued that the alleged encounter never actually happened and that it is unbelievable that despite the shootout for 15 long minutes between the police and the armed accused persons, no member of the police party or the accused received any injury or even a scratch. He submits that the applicants have been falsely involved in this case and the alleged recoveries have been foisted against them; that there is a general allegation against the applicants and no specific role is assigned to them; that there is no past criminal record of the applicants and lastly that the cases have been challaned and the applicants are not required to police for any investigation.

5. Conversely, the learned DPG opposed the bail applications, contending that the applicants were apprehended red-handed at the spot and crime weapons were also recovered from them; that the police officials have no enmity with the applicants to involve them in these cases falsely.

6. On the tentative assessment of the material available on the record, it appears that no independent person was associated by the complainant despite having prior information regarding the availability of the accused persons at the scene of offence; thus, there is a violation of Section 103, Cr.P.C; therefore, the very arrest and recovery of crime weapons calls for further enquiry. The whole

case of the prosecution rests upon the evidence of the police officials; therefore, no question arises for tampering with their evidence at the hands of the applicants/accused, hence, evidence of the police officials is required to be minutely scrutinized at the time of trial, whether the offence as alleged in the FIR is committed by the applicants/accused in the manner as narrated by the complainant or otherwise. The applicants were allegedly available at the place of incident in order to commit some offence, but no overt act towards an offence was said to have been done. It is also admitted position that alleged encounter between the police and the accused lasted for 15 minutes, yet neither the accused nor the police personnel sustained any bullet injury. Even though no bullet hit to police van, thus, this is a case of ineffective firing. In the case of *Rab Nawaz v. The State (1990 SCMR 1085)* the Supreme Court of Pakistan observed as under:-

“In this background and in view of the absence of any bullet injury, the fact whether the petitioner did intentionally fire at the police party, but was unsuccessful to hit anybody, because the bullet missed, or the case has been padded by the inclusion of this false firing, assumes prominence and since this matter cannot be determined, till proper evidence is recorded in the case, we would, taking all circumstances into consideration, allow bail to the petitioner.”

7. Apart from that, all witnesses and mashirs are police officials; therefore, the question of tampering with prosecution evidence does not arise, Section 399 PPC deals with preparation for committing dacoity, while Section 402 PPC deals with the persons assembled to commit dacoity. There is no iota of evidence on record to show the previous involvement of the applicants in any case of dacoity. Therefore, the applicability of the above sections of law is yet to be determined during the trial. The applicants have been behind the bars since their arrest and their physical custody is no longer required by the police for further investigation.

8. So far as the recovery of the weapons is concerned, as mentioned above, no private/independent person has been associated witnessing the recovery proceedings; therefore, this also requires further probe.

9. Keeping in view the above facts and circumstances, prima facie, the applicants have succeeded in bringing their cases within the purview of sub-section (2) of Section 497, Cr.P.C, for which reason these bail applications are allowed and the applicants are admitted to post arrest bail, subject to their furnishing solvent sureties in the sum of Rs.50,000/- (Rupees fifty thousand)

each, in each case and P.R. Bonds in the like amount to the satisfaction of the trial Court.

10. The observations are tentative in nature, which shall not affect the case of either party at trial.

JUDGE

Qazi Tahir PA/*