

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

Cr. B.A. No. D- 536 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. Achar Khan Gabole Advocate for applicant/accused.
Mr. Zulfiqar Ali Jatoi, DPG for the State.

Date of hearing: 08.01.2014.

ORDER

Naimatullah Phulpoto, J; Applicant/accused Mumtaz Khokhar seeks post arrest bail in Crime No.56 of 2012, registered at Police Station, Sarhad, on 20.6.2012, under Sections 324, 353, 397 PPC read with section 7 ATA, 1997.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 20.6.2012 HC Sanwal Khan, incharge PP Jahanpur of P.S. Sarhad left along with subordinate staff for patrolling duty. At 0200 hours police party reached near the otaq of Shah Nawaz Samejo, electric bulbs were burning at that time. Police party saw 10 armed persons on the headlight of motorcycle and bulbs. they were 1. Gulzar Sundrani, 2. Muhammad Panah alias Panho Sundrani, 3. Sarwar alias Sanaullah alias Tinoo Sundrani, 4. Ghulam Nabi Sundrani, 5. Sohno Shar, 6. Mumtaz Khokhar, 7. Shah Beg, 8. Manzoor alias Bazoori Mahar, 9. Ashiq Mahar and 10. Gulzar Mahar. It is alleged that there was encounter in between the police and accused. It is alleged that accused Mohammad Panah and Mumtaz caused butt blows to PC Sahib Dino and tried to snatch from him official SMG. On the resistance, it is alleged that accused Gulzar Sundrani fired from his KK at P.C Sahib Dino which hit him. Accused also fired upon police. Police

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also fired upon accused. Encounter continued for about 10 minutes. Thereafter, accused succeeded in running away. It is stated that PC Sahib Dino had sustained injuries by butt blows and he had also received fire arm injury at his right arm. Such information was conveyed by HC Sanwal Khan to SHO, P.S, Sarhad. In the meanwhile, SHO, P.S, Sarhad along with subordinate staff reached at place of incident and footprints were tracked which disappeared at Sarhad forest. FIR of the incident was lodged under the above referred sections at P.S. Sarhad.

3. Applicant/accused was arrested during investigation. On conclusion of investigation challan was submitted against the accused under the above referred sections.

4. Bail application was moved on behalf of applicant/accused, same was rejected by learned Judge, ATC, Sukkur vide order dated 31.7.2013. Thereafter, the applicant/accused approached this court.

5. Mr. Achar Khan Gabole, learned Counsel for applicant/accused mainly contended that the intention of applicant/accused Mumtaz of attempt to commit murder of PC Sahib Dino is yet to be determined at the trial. There are general allegations against the applicant and co-accused Mohammad Panah. He has also argued that applicant/accused is behind bar for 1 year and 6 months, yet trial has not proceeded. It is also argued that all the PWs are police officials, there is no question of tampering with the evidence. In support of his contentions, he relied upon case of Junaid and 2 others v. the State (2000 P.Cr.L.J 1510).

6. Learned DPG argued that name of the applicant/accused did transpire in the FIR and he along with co-accused Mohammad Panah caused butt blows to PC Sahib Dino. Ocular evidence is corroborated by medical evidence. He has opposed the application.

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7. We are inclined to grant bail to the applicant/accused for the reasons that the applicant/accused was armed with deadly weapon but he had chosen to cause butt blows to PC Sahib Dino along with co-accused, therefore, application of section 324 PPC under the circumstances of the case is yet to be determined at the trial. It is surprising to observe that how the police officials had identified the accused by name as soon as they came within their sight, who were not known to them previously. Moreover, there are general allegations against applicant/accused for causing butt blows to PC Sahib Dino. Applicant/accused is behind bar since 1 year and 6 months, yet trial has not proceeded. All the PWs are police officials, there is no question of tampering with the evidence. In the circumstances of the case and while relying upon the above cited authority, prima facie, a case against applicant/accused 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.

9. These are the reasons in support of our short of even date.

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