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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Misc. Application No.D-09 of 2017

Date of Hearing 29.8.2017.	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For hearing of case.
3. For hearing of M. A. No.1927/2017.

Mr. Ghulam Dastagir A. Shahani, advocate for applicants.

Mr. Khadim Hussain Khooharo, Addl. P.G.

Mr. Abdul Rahman A. Bhutto, advocate for respondent No.2.

Through captioned criminal miscellaneous application, applicants seek conversion of NBWs into BWs for applicant Zamanat Ali (Zamin Ali) and suspension of NBWs/admission on bail of applicant Ghulam Qadir (Abdul Qadir).

2. In nutshell accusation is that on 23.3.2017, at about 11.00 a.m. accused persons, namely, 1. Abdul Waheed Town Officer, 2. Abdul Qadir Domki armed with rifle, 3. Zamin Ali with K.K, 4. Awais Magsi and one unidentified accused entered the office of complainant/Chairman, Town Committee, Kashmore, raised slogans against Pakistan and accused Abdul Waheed taking out T.T. Pistol fired at the complainant, which went missing; then all the accused persons made aerial firing and extended threats of murder to the complainant.

3. Learned Counsel for the applicants submits that the name of applicant Zamanat Ali has been placed in column No.2 of the challan by the investigating officer; that the learned trial Court has illegally issued NBWs instead of BWs; that the BWs should have been issued by the trial Court while taking cognizance; that one of the co-accused has been admitted to bail by the trial Court, therefore, he prays that NBWs ordered to be issued against applicant Zamanat Ali may be converted into BWs. In support of his arguments, learned Counsel for the

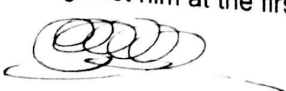
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applicants has relied upon unreported order dated 08.11.2010 passed by this Court in CrI. Misc. Application No.S-165/2010 re-Loung Khan & others v. The State and order dated 11.12.2002 passed by the Hon'ble Supreme Court of Pakistan, in Criminal Petition No.105-K of 2002 re-Shah Murad & others v. The State.

4. Conversely, learned DPG has recorded no objection if the NBWs issued against applicant Zamanat Ali be converted into BWs.

5. We have heard the Counsel for the applicants, learned Addl. P.G for the State and have perused the record.

6. Admittedly, name of applicant Zamanat Ali has been placed in column No.2 of the challan-sheet by the investigating officer while submitting his report under Section 173, Cr.P.C. There is no cavil with the proposition that the Magistrate is not merely a post office to send all the accused nominated by the police for trial and let-of those placed in column No.2 of the challan, as has been observed by the Honourable Supreme Court of Pakistan in number of cases. The Magistrate has to apply his conscious mind to agree or disagree with the police report. The Magistrate indeed takes cognizance of the offence and not the particular person named in the challan. Consequently, if he decides to join a person who has been placed in column No.2 of the challan, he has to summon him at the first instance, which may also include issuance of coercive process viz., non-bailable warrants and proceedings under Section 87 and 88, Cr.P.C if such person despite efforts fails to appear. In the case in hand, the applicants, as per record, were cooperating with the police. Applicant Zamanat Ali was found innocent, therefore, he was shown in column No.2 of the challan. In such case, it would indeed be harsh to issue non-bailable warrants against him at the first instance. The Magistrate should have first issued



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bailable warrants and if accused was not appearing, then coercive method had to be adopted. In this regard we are fortified with the observations recorded in an unreported order dated 08.11.2010 passed by this Court in CrI. Misc. Application No.S-165/2010 re-Loung Khan & others v. The State, another order dated 24.9.2012 passed by this Court in Criminal Misc. Application No.S-74/2012 re-Muhammad Younis & another v. The State, and order dated 11.12.2002 passed by the Hon'ble Supreme Court of Pakistan in Criminal Petition No.105-K of 2002 re-Shah Murad & others v. The State.

7. Consequently, the non-bailable warrants issued against applicant Zamanat Ali are converted into bailable warrants and he is directed to approach the trial Court and furnish surety as may be directed, whereas operation of NBWs issued against applicant Ghulam Qadir (Abdul Qadir) is suspended for a period of 14 days and he is admitted to protective bail in the sum of Rs.50,000/- and P.R bond in the like amount as surety to be furnished to the satisfaction of Additional Registrar of this Court. Both the applicants are directed to present themselves before the trial Court immediately and if they do not appear before the concerned Court, then in the first instance bailable warrants be issued against them and then coercive method may be adopted.

8. This order shall cease to have effect on expiry of 15 days from today or on the date on which applicant Ghulam Qadir (Abdul Qadir) approaches the trial Court, whichever is earlier.

9. The criminal miscellaneous application stands disposed of in above terms along with listed applications.


JUDGE


JUDGE