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IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Cr.B.A. No.341 of 2016

Saleem Ahmed Khan

Vs.

The State.

Date of hearing: 13.05.2016

Date of Order 20.05.2016

Applicant: Through Mr. Mumtaz Ali Khan Deshmukh,
Advocate for the Applicant.

Respondents: Through Mr. Muhammad Saleem Akhtar,
APG for State.

ORDER

Mohammed Karim Khan Agha, J. By this order, we propose to dispose of the bail application moved on behalf of the applicant/accused under Section 497 and 498 Cr.P.C. in FIR No.325 of 2015, under Section 23(1)(A), Sindh Arms Act, 2013 lodged at P.S. New Karachi, District Central. The applicants first bail application was dismissed by the learned Anti-Terrorism Court No.X, Karachi on 18.2.2016 in Special Case No.AJ-76/2015.

2. The brief facts of the prosecution case are that complainant SIP Kabeer Ahmed Abbasi, posted at P.S. New Karachi, disclosed that on 19.10.2015 at 2100 he alongwith PC Zameer Ahmed, PC Ahmed Abbas, PC Ameer Bux and PC/Driver Muhammad Hussain were busy in patrolling in a Government Mobile No.III of P.S. New Karachi for prevention of crime in the area. During patrolling at about 2100 hours, when they reached inside service road near Noor Masjid, Sector 11/D, New Karachi, they saw one suspicious person standing over there and the said suspicious person was apprehended with the help of his subordinates. On inquiry, he disclosed his name as Saleem Ahmed Khan @ Don son of Nafees Ahmed Khan. From his personal search a pistol in black colour

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without number and loaded magazine with five rounds and from his right side pocket of his shirt one hand grenade green colour embossed H-1189 on its back side were recovered. From his further personal search cash of Rs.230/- and 02 mobile phones, (1) Nokia 120, colour Grey along with SIM and (2) Nokia X-I Colour Red and black alongwith SIM and one original CNIC bearing No.42101-1576158-7 in the name of Saleem Ahmed Khan. On demand of license of recovered weapon he could not produce the same and he informed that he brought the said weapon for terrorist activity. Hence, this act of the accused falls under Section 23(1) (A) of Sindh Arms Act, 2013 and under Section 4/5 of Explosive Substance Act, 1908 and section 7 ATA. Accused was arrested and recovered weapon was sealed at the spot and got possession of hand grenade. Thereafter on return to police the station an FIR was registered against the accused.

3. Learned counsel for the applicant/accused argued that the applicant is absolutely innocent and has committed no offence and he has been falsely implicated in the above case with malafide intention to achieve ulterior motive. He further submitted that the real fact is that much prior to the instant alleged crime the applicant/accused was arrested by Pakistan Rangers personnel and the news was duly published in daily newspapers; later on Pakistan Rangers handed over the custody of the present applicant/accused to the police and police registered this false and fabricated case against him. He next submitted that the complainant failed to mention the bore of recovered pistol in the FIR, which makes the entire case highly doubtful. He further argued that all the witnesses are interested personal or police personnel, the prosecution did not bother to associate any private independent witness which is a clear violation of the mandatory provision of section 103 Cr.P.C. and in absence of any private independent witness no case of such nature has been made out against the applicant/accused person. He also argued that no such recovery was affected from the possession of the applicant/accused; challan has been submitted before the learned trial court after inordinate delay of 16 days and prosecution violated the mandatory provision of law which also makes the case highly doubtful. He lastly argued that this is a case of further inquiry which comes within the meaning of section 497 (2) Cr.P.C.

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He prayed that the impugned order dated 18.02.2016 passed by the learned Anti-Terrorism Court No.X, Karachi be set aside and the applicant be enlarged on bail.

4. Mr. Saleem Akhtar Buriro, learned APG for the State vehemently opposed the grant of bail and emphatically supported the impugned bail order passed on 18.02.2016 by the learned trial court with further submissions that the applicant is not entitled for the grant of bail as sufficient material is available on record against the applicant/accused to connect him to the commission of offence and he is also a habitual offender, therefore, the bail application is liable to be dismissed.

5. We have considered the submissions of learned counsel for the applicant and learned State Counsel and perused the record.

6. It appears that the applicant was apprehended at 9pm at night by the police and on his search an unlicensed pistol and hand grenade was recovered. Due to the time of night and the fact that no person was prepared to act as mashir we find this understandable in the current criminal environment which is prevailing in the city. Besides police witnesses are as good a witness as any other witness.

7. The offense charged is a serious one and falls within the non prohibitory clause of S.497 Cr.PC. Furthermore, we have also been provided with a CRO report in respect of the applicant. An examination of the CRO Report reveals that there are three pending cases against the applicant some of which are of a similar nature. In FIR 10/2006 U/S 392/44 PS Bilal Coloney the applicant was granted bail and subsequently became an absconder. In FIR 218/2011 U/S 13 (d) PS New Karachi the applicant was granted bail and subsequently became an absconder. In FIR 161/2007 U/S 392 at PS Sir Syed the applicant is still being sought by the police.

8. In our view there are reasonable grounds to connect the applicant to the offense for which he is charged and in addition he appears to be a habitual offender who based on the CRO Report has twice absconded in different cases when he has been enlarged on bail.

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9. Under these circumstances the applicant's application for bail is dismissed. However the learned trial court is directed to complete the trial of the applicant within 4 months of the date of this order. The office shall provide a copy of this order to the concerned trial court forthwith for compliance which shall submit fortnightly progress reports to this Court through MIT II.

10. It is made clear that we have only made a tentative assessment of the material placed before us and this order shall not prejudice the case of either party at trial which shall be decided by the trial court based on the evidence before it.

Dated:-20-05-2016