

317

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.155 of 2016.
Naeem Ahmed
V.
The State.

Cr.B.A. No.156 of 2016.
Naeem Ahmed
V.
The State.

Cr.B.A. No.157 of 2016.
Naeem Ahmed
V.
The State.

Date of hearing: 29.02.2016
Date of Order 11.04.2016
Applicant: Through Mr. Javed Ahmed Chattari,
Advocate for Applicant.
Respondents: Through Mr. Muhammad Iqbal Awan, APG
for State.

ORDER

Mohammed Karim Khan Agha, J. - By this common order, we propose to dispose of these three bail applications arising out of three separate FIR's arising out of the same incident all lodged against the applicant being FIR Nos.189, 190 & 191 of 2015, under sections 353,324, 34 PPC read with 7 ATA, 23(i) (A), SAA & 4/5 Explosive Act, lodged at P.S. Sher Shah.

2. The brief facts of the prosecution case are that complainant ASI Khuda Bux of PS Sher Shah had filed these FIRs on 8.9.2015 stating therein that on the same day he was on patrol along with his police party in Government mobile in search of accused person and had reached at about 01:00 hours at Paracha graveyard road near Afghan Shah Jehan Hotel Sher Shah, Karachi, when he saw a young person going suspiciously. He had called him to stop but he

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started running. ASI had again called him but the accused in order to kill the police party had started firing at the police party. ASI in self-defence retaliated and succeeded to apprehend the accused. On inquiry, the accused disclosed his name as Naeem Ahmed. During the course of his personal search a pistol of 30 bore without number loaded magazine one in chamber and one in magazine and from further search a hand grenade was recovered from his right side pocket of his kameez on which it was written ARGES/HDGR 69 and on the bottom side was written F-89. On demand of license or the permit of weapon he failed to produce the same and as such the accused was arrested and separate FIR's were registered against him. The hand grenade was later defused through B.D.S.

3. Learned counsel for the applicant/accused argued that the applicant is absolutely innocent as no police encounter took place and it is a fake encounter shown by the police as the present applicant was arrested by a law enforcement agency from his house on 18.8.2015 at about 01:00 hours, that his wife promptly attempted to register a case with the local police station concerning his abduction which was refused to be registered; that thereafter his wife filed a Constitution Petition bearing No. C.P. No.D-4943 of 2015 before this Court, and this Court has observed that the present case/cases are fake and fabricated. He further argued that in the light of above facts and circumstances, it is crystal clear that the alleged encounter and recoveries are concocted and the police has done this in order to save the skin of the law enforcement Agency, who kept the applicant in wrongful confinement and handed over the custody of the applicant to Sher Shah Police by using their influence and threats to the S.H.O to show the arrest of the applicant; that the present applicant is no more required for

4/30

further investigation and has been remanded to Judicial Custody after spending a remand for 15 days and no other case is pending against the applicant except this false and fabricated case/cases; that this is a case of further inquiry; that nothing has been recovered from the possession of the accused and whatever has been shown as recovered from him has been foisted upon him. Hence the applicant is entitled to be enlarged on bail.

4. On the other hand, learned APG vehemently supported the impugned bail order passed on 13.01.2016 (impugned order) by learned Anti-Terrorism Court No.II, Karachi whereby the applicants application before that Court had been declined and submitted that the applicant is not entitled for the grant of bail as sufficient material is available against the applicant on record, therefore, all three bail applications should be dismissed.

5. We have considered the contentions raised by learned counsel for the applicant and the State and have perused the record.

6. The charges in FIR Nos.189, 190 & 191 of 2015, under sections 353,324,34 PPC read with 7 ATA, 23(i)(A), SAA & 4/5 Explosive Act, lodged at P.S. Sher Shah are of a serious nature. However, this in and of itself would not preclude the applicant from being granted bail.

7. As per settled law we have only made a tentative assessment of the material placed before us in making this order, which shall not prejudice the case of either party at trial, which shall be decided on merits based on the evidence by the trial court.

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8. On the one hand we have noticed that all the witnesses are police officials and the recoveries were made on the spot according to the FIR's and memo of arrest and recovery.

9. On the other hand it is observed that all three of the FIR's were lodged on 8-9-15 whilst prior to this date on 19-8-15 the wife of the applicant had filed a habeas corpus petition (CP 4943/15) before this Court claiming that her husband on 18-8-15 had been taken by force from outside their house by a law enforcement agency and that he should be produced. Apparently, on the night of the applicant's abduction she had attempted to register a case at a local police station, but the police declined to entertain her application and as such she sent a copy of it by TCS to the concerned SHO.

10. This Court gave notice to the concerned law enforcement agency and the State in the aforementioned habeas corpus petition and on 17-9-15 this Court was informed that the applicant had been arrested in the aforesaid FIR's and as such he was no longer a missing person.

11. All three FIR's were lodged approximately 3 weeks after the habeas corpus petition was filed. In addition, admittedly this is a case of ineffective firing however during the alleged encounter which appears to have lasted a number of minutes with deadly weapons being used by each side neither the applicant nor any of the police officers seemed to have received a scratch let alone a firearm injury. Likewise it appears that the police mobile was also not hit by any bullet. The lodging of the three FIR's so long after the habeas corpus petition was filed and the lack of injuries to either side during the encounter and subsequent apprehension of the applicant in our view creates doubts regarding the applicant's

321

connection with the commission of any of the offenses mentioned in all 3 FIR's and as such is a case of further inquiry. Furthermore, the applicant is no longer required for investigation purposes and is currently in judicial custody.

12. For the reasons mentioned above in our considered view the applicant has successfully made out a case for bail and is enlarged on bail in respect of all 3 of the aforesaid FIR's subject to his furnishing solvent security of Rs. 200,000/- (two lacs) in respect of each FIR and PR bond in the like amount to the satisfaction of the Nazir of this Court.

Date: 11-04-2016