

6

**THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANO**

**1<sup>st</sup> Criminal Bail No.D-35 of 2023**

Before:

*Mr. Justice Muhammad Saleem Jessar  
Mr. Justice Khadim Hussain Soomro*

Applicant: Noor Hassan son of Haji Sheral Jaffer through M/s. Asif Ali Abdul Razzak Soomro and Shakeel Ahmed G. Ansari, Advocates.

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

Date of hearing: 21.11.2023

Date of Judgment: 21.11.2023

**O R D E R**

MUHAMMAD SALEEM JESSAR, J.-. Through instant bail application, applicant Noor Hassan Jaffer seeks post arrest bail in the case emanating from F.I.R No.55/2023, registered at Police Station B-Section Thull, District Jacobabad for offence punishable under Sections 324, 353, 427, 35 P.P.C read with section 6(H)(i)(M), 7, Anti Terrorism Act, 1997. The case has been challaned, which is now pending for trial before the Court of Special Judge, Anti Terrorism Shikarpur vide Special Case No. 42 of 2023 (*Re-The State v/s. Noor Hassan Jaffer and others*). The applicant preferred his bail plea before the Trial Court, which was declined by way of common order dated 03.10.2023; hence this bail application has been maintained.

2. The main crux of the prosecution case is that the police party headed by ASI Ali Gul Choliyani of P.S. B-Section Thull was on patrolling duty when they received spy information that accused Muhammad Rafique, who was wanted in Crime No.04/2023 for offence under sections 324, 353, 399, 402 P.P.C and Crime

No.49/2023 for offence under sections 324, 353, 148, 149 P.P.C both registered with Police Station B-Section, Thull, was coming from Rahzan Dhori (a place known to be of a criminal den) towards village Khabar Pahore with intention to commit a crime; upon receipt of such information the police party headed towards the pointed place where they were intercepted by outlaws and after an encounter the applicant as well as co-accused were arrested in an injured condition alongwith their respective weapons while remaining had succeeded in managing their escape good. Hence instant case was registered on behalf of the State.

3. Learned counsel for the applicant contended that the applicant was taken away by the police from his home and after causing torture to him, they cooked up instant story aims to save their skin from severe punishment of law, therefore, inspite of giving long bullock story, the prosecution case has no independent legs to stand upon. They further submit that though the complaint/F.I.R. reveals that the applicant had sustained injury(ies) on his person at his hands as well as some scratches on his forehead, yet Medicolegal Certificate issued by the Medicolegal Officer namely Dr. Habib-ur-Rehman Jakhro, depicts some other version, which is in contravention of the version of the prosecution case and no firearm injury has been shown to have been sustained by the applicant as alleged in the prosecution case. In support of their contentions, they have referred to the Medicolegal Certificate No.THT/435 dated 12.08.2023. They further went on to say that though there was encounter which lasted for 30 minutes and round about 900 bullets, as claimed by the police, were fired, yet none from the police had sustained any injury or even any scratch at their person except allegedly fires hit the vehicle, hence, they submit that case against present applicant/accused requires further enquiry. The counsel for the applicant further submitted that the alleged recovered weapon has been foisted upon the accused. In support of their contentions, they place their reliance upon the cases reported as 2016 P.Cr.L.J Note 54 (Javed v/s. The State), 2020 P.Cr.L.J Note 199 (Muhammad Raees v/s. The State) and 2022 P.Cr.L.J 920 (Owais and another v/s. The State).

4. Learned Deputy Prosecutor General appearing for the State has vehemently opposed the grant of bail to the applicant/accused on the ground that the applicant is a habitual offender and prior to this case, he had been challaned under Crime No.67/2023, registered at Police Station B-Section, Thull for offence under sections 324, 337-F(v) P.P.C. Besides he was apprehended by the police on spot in an injured condition, therefore, he is not entitled for grant of bail. He; however, could not controvert the fact that none from the police party have sustained any injury or even scratch on their person.

5. We have heard learned counsel for the applicant, learned Deputy Prosecutor General and have gone through the material made before us on record.

6. No doubt the applicant has been shown to have been captured by the police after an encounter in an injured condition, but surprisingly enough to note that there was close distance between the police and the accused even then not a single bullet went to hit any of the members from police party or even scratch, which may show that the police was deterred from performing their lawful duty as claimed. In such an eventuality, application of section 353 P.P.C required further probe and it is yet to be established by the prosecution after recording evidence of its witnesses. As far as Section 324 P.P.C is concerned, that too require further probe as none from the police party had sustained any injury or even scratch on their person, through which it can be *prima facie* deduced that the applicant party had attempted to commit their Qatl-i-amd, which may warrant application of section 324 P.P.C. Whereas Section 427 P.P.C is to the effect of loss allegedly caused to the vehicle, same is still to be established by the prosecution and then the Trial Court has to determine such an accusation against the accused.

7. We are constrained to persuade and refer the dicta laid down by learned Division Bench of this Court in case of ***Qurban Ali and another v/s. The State*** (2006 MLD 530). In *supra* case

identical issue was involved and the applicants therein were enlarged on bail during pendency of the trial.

8. In the light of above discussion and circumstances of the case coupled with the dicta laid down by this Court in the case referred to supra, we are of the considered view that the applicant has made out a good case for his release on bail during pendency of the trial within the meaning of sub-section (2) of Section 497 Cr.P.C. Hence case against him requires further enquiry. Consequently, instant Criminal Bail Application is hereby allowed. Applicant Noor Hassan Jaffer is admitted to bail subject to his furnishing a solvent surety in the sum of Rs.100,000/- (*Rupees One Hundred Thousands only*) and P.R bond in the like amount to the satisfaction of the learned trial Court.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of either party at trial.

  
21/11/2023  
Judge

Manzoor