

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Appl. No.1471 of 2014

Date

Order with signature of Judge

For hearing.

03-02-2015

Mr. Muhammad Nadeem Khan, Advocate for the Applicant.

Mr. Muntazir Mehdi, APG.

x-x-x-x-x-x

Abdul Maalik Gaddi, J.:- Applicant/Accused Nasir son of Kabeer Ahmed Bangali seeks bail in Crime No.927/2013 registered at Police Station Korangi Industrial Area, Karachi, under Section 23 (i)(a) of Sindh Arms Act, 2013.

Brief facts of the prosecution case as disclosed in the FIR are that present Applicant/accused was arrested by police on 28.12.2013 and upon his personal search one 30 bore pistol with loaded magazine containing two live rounds were recovered from his possession for which applicant/accused had no license. He was arrested in presence of Mashirs, thereafter he was brought at police station where the aforesaid FIR was registered against him.

After usual investigation challn was submitted against the accused under the above referred section.

Bail Application was moved on behalf of the Applicant/accused before the Ist Additional Sessions Judge, Karachi East, the same was rejected vide order dated 30-06-2014, thereafter, the applicant/accused approached to this Court.

Mr. Muhammad Nadeem Khan, Advocate for the Applicant/Accused mainly contended that the number of pistol has not been mentioned, challan against accused has been submitted before the trial Court. He is no more required for investigation, all the P.Ws are police officials and there is no question of tampering with the evidence. It is also argued that pistol has been foisted upon the accused by the police due to enmity. In support of his contention learned counsel placed reliance upon the case of Jamaluddin alias Zubair Khan V/S The State reported in 2012 SCMR 573.

Learned APG appearing on behalf of the State, argued that one 30 bore pistol has been recovered from the possession of the applicant/accused, alleged offence carries punishment of more than 10 years, the case of the present applicant/accused falls within the prohibitory clause of Section 497 Cr.P.C., all the PWs have implicated the accused in the commission of offence. He has opposed the bail application.

I am inclined to grant bail to the applicant/accused for the reasons that all PWs are police officials, case has already been challaned, the applicant/accused is no more required for investigation. He is behind the bars since 28-12-2013. There is no apprehension of tampering with the prosecution evidence. It is alleged that police has foisted one 30 bore pistol upon the applicant/accused due to enmity. Needless to say that the Court while hearing a bail application not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. Rightly reliance has been placed upon the case of Jamaluddin alias Zubair Khan (supra). Relevant portion is reproduced as under:

“4..... Needless to say that the Court while hearing, at petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the cas. The fact that Petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail.

5. The argument that the petitioner has been involved in two other cases of similar nature would not come in the way of grant of petition so long as there is nothing on the record to show that he has been convicted in any one of them. We, therefore, convert this petition into appeal and allow it. The appellant shall be released on bail subject to furnishing bail bonds in the sum of Rs.200,000/- (Rupees Two Lacs) with two sureties in the like amount to the satisfaction of the trial court.”

The fact that the applicant has been in jail since 28.12.2013, yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail. In the instant case, one 30 bore unlicensed pistol is alleged to has been recovered from possession of accused. It has been argued that police has foisted the same upon the accused due

to enmity. Number of pistol has not been mentioned. Therefore, keeping in view the facts and circumstances of the case, prima facie, case against applicant/ accused requires further inquiry as contemplated under subsection (2) of Section 497 Cr.P.C. Applicant/accused Nasir son of Kabeer Ahmed Bangali is admitted to bail subject to his furnishing solvent surety in the sum of Rs.60,000/- (Rupees Sixty Thousand only) and P.R Bond in the like amount to the satisfaction of the trial Court.

Needless, to mention here that the observation made hereinabove are tentative in nature and would not influence trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Shahbaz

