

**IN THE HIGH COURT OF SINDH, KARACHI**

**Criminal Bail Application No.595 of 2020**

Before:

Mr. Justice Abdul Malik Gaddi  
Mrs. Justice Rashida Asad

Applicant : Muhammad Raees son of Muhammad Saeed  
through Mr. Muhammad Imran Khan,  
advocate

Respondent : The State through Mr. Abrar Ali Khichi,  
Additional Prosecutor Genral, Sindh.

Date of hearing : 13.05.2020

Date of Order : 13.05.2020

**ORDER**

**Abdul Maalik Gaddi, J.** Having remained unsuccessful in obtaining his release on bail in Crime Nos.18 & 19 of 2019 registered under Section 353, 324 and 34 PPC read with Section 7 ATA 1997 & 23 (i)(a) of Sindh Arms Act, 2013 at Police Station Mehmoodabad, Karachi. Now applicant Muhammad Raees is seeking his release on bail in the said crimes through instant bail application.

2. The Allegations against applicant is that on 17.01.2019, when police party headed by ASI Ghulam Fareed along with subordinate staff was busy in patrolling in the area and reached at about 0210 hours at TP-II, near Water Board, the present applicant along with his companion, after seeing police party started firing upon them and in retaliation police party also fired upon them and due to this encounter present applicant was arrested under injured condition and recovered from his possession one 30 bore pistol loaded with three live bullets.

3. Mr. Muhammad Imran Khan, learned counsel for the applicant has argued that the applicant accused is innocent and has not committed any crime but has been falsely implicated by the police in this case just to show their efficiency before their superiors; that present applicant accused was picked up by law enforcing agencies prior to incident and involved him in this case; that the alleged incident was took place in the populated area despite of this fact no independent person has been cited as a witness in this case, therefore, the false implication of the applicant in this case could not be ruled out and the case of the applicant required further probe; that the arrest of applicant accused has been shown in this case on 17.01.2019, charge has been framed and only one PW has been examined in the period of about thirteen months, therefore, according to him on this ground, applicant is also entitled for bail in non-conclusion of trial within one year.

4. On the other hand, Mr. Abrar Ali Khichi, learned Additional Prosecutor General has opposed this bail application on the ground that applicant is nominated in FIR with specific role that at the time of incident this applicant along with his companion made direct firing against police party and during encounter, the present applicant has received injuries at his left leg and recovery of pistol was also made against him in presence of mashirs. Per learned Additional Prosecutor General trial has commenced and out of eight [08] witnesses, one PW Shahid Ahmed has been examined, who in his evidence has supported the prosecution case.

5. We have heard the learned counsel for the parties at a considerable length and have perused the police papers so made available before us with their able assistance.

6. It appears from the record that case has been challaned and present applicant is no more required for investigation. It is noted that the case in

hand is of alleged encounter in between the parties with sophisticated weapons for a considerable time and at some distance, but during this alleged encounter surprisingly nobody has received any injury to the police officials even police mobile has also not hit by any bullet from the applicant side. However, present applicant received injury at his left leg below his knee, which does not appeal to prudent mind. During the course of arguments, we have specifically asked the question from the learned Law Officer that when the encounter was taken place at some distance then how applicant received injury below his knee, he has no satisfactory answer with him.

7. It is also noted that incident took place in a populated area, despite of this fact no person from the locality or passerby from the road has been cited to witness the event, as such, this aspect of the case requires further enquiry in the matter whether the incident has taken place in a fashion as stated in FIR or otherwise. It is settled law that at the bail stage deeper appreciation of evidence cannot go into but a bird eye view is to be taken to available record before the Court to satisfy prima facie, whether the accused is/are connected with the commission of offence or not even otherwise benefit of doubt will go to the accused even at bail stage. Apart from the above, record reflects that applicant/accused was arrested on 17.01.2019 and since then he is in custody, almost more than thirteen months has been expired in spite of framing of charge, out of eight witnesses only one PW, namely, Shahid Ahmed has been examined and if the learned trial Court shall proceed the trial with such a speed, the same would not be concluded in near future. We have noticed that under Section 19 (7) of Anti-Terrorism Act, 1997 provides that the Court shall on taking cognizance of a case proceed with the trial from day-to-day and shall decide the case within seven days, but in this case as observed above

thirteen months has been expired but case has not been concluded. As observed above, case has been challaned and in this backdrop, no useful purpose would be served by keeping the applicant behind the bars. It is important to remember here that the bail is not to be withheld as a punishment. Nothing on record that present applicant is a previous convict or he has remained indulge in any other identical case in past, therefore, under these circumstances, the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

8. In view of the above, we have come to conclusion that applicant has made out the case for grant of bail and consequently we admit the applicant/accused on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- [Rupees Fifty Thousand Only] in the like amount to the satisfaction of trial Court. Needless to mention here that any observations hereinabove in this order is tentative in nature and shall not effect the merit of the case.

**JUDGE**

**JUDGE**

Qurban/PA\*