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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-247 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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24.7.2013.

1. For orders on office objection as Flag 'A'.
2. For Hearing.

Mr. Shamsuddin Abbasi, advocate for applicant.
Mr. Qazi Mohammad Bux, State Counsel.

ORDER SHEET

Salahuddin Panhwar, J- Through instant bail application,

applicant Sabit Ali seeks post arrest bail in Crime

No.114/2013, Police Station Mehar under section 23 of Sindh

Arms Act, 2013.

2. Precisely, the relevant facts of the prosecution case are that the complainant along with his sub ordinate

staff was on patrolling, while they reached at link road Qazi Salahuddin Panhwar J- Through instant bail application. Arif where they found suspected person; who tried to escape applicant Sabit Ali seeks post arrest bail in Crime but they tactfully apprehended him. During interrogation, he No.114/2013, Police Station Mehar under section 23 of Sindh disclosed his name Sabit Ali, resident of Village Mirza Khoso. Arms Act, 2013.

Thereafter, from his personal search recovery of one pistol, thirty bore and one magazine with three live bullets of same case are that the complainant along with his sub ordinate bore were effected. Accused/applicant along with case staff was on patrolling, while they reached at link road Qazi property was brought at Police Station. FIR was lodged and Arif where they found suspected person; who tried to escape after usual investigation, he was sent up for trial to the but they tactfully apprehended him. During interrogation he concerned Court.

3. Learned counsel for the applicant *inter alia* contended that instant case falls within the definition of

one and one magazine with three live bullets of same case are that the complainant along with his sub ordinate bore were effected. Accused/applicant along with case



"arms" as provided in section 2 of Sindh Arms Act 2013; same is governed by section 24 of the Act, which provides maximum punishment up to seven years, hence same does not fall within the prohibitory clause of section 497, (1), Cr.P.C. He further contended that case is pending for adjudication of his guilt; the applicant is no more required for further investigation and he has no previous criminal record; "arms" as provided in section 2 of Sindh Arms Act 2013 there is no likelihood of tampering with the prosecution evidence. In support of his contention, he has relied upon the maximum punishment up to seven years, hence same does not fall within the prohibitory clause of section 497, (1), Cr.P.C. He further contended that case is pending for adjudication of his guilt; the applicant is no more required for further investigation and he has no previous criminal record; offence is punishable up to 14 years as provided under section 23(1) of the Act, thus same falls within prohibitory clause of Section 497 Cr.PC and Section 34 of the Act excludes the applicability of Section 103 Cr.PC, so he lastly while praying for rejection of bail plea of the applicant.

4. Learned counsel for the State argued that by new enactment legislators have intended to curb the misuse of weapons; further investigation and he has no previous criminal record; offence is punishable up to 14 years as provided under section 23(1) of the Act, thus same falls within prohibitory clause of Section 497 Cr.PC and Section 34 of the Act excludes the applicability of Section 103 Cr.PC, so he lastly while praying for rejection of bail plea of the applicant.

5. Heard learned counsel for both the parties and perused the record.

6. Before examination of factual aspect, it will be incumbent to examine the legal aspect towards application of Section 103 Cr.PC, so he lastly while praying for rejection of bail plea of the applicant. The examination of the Sindh Arms Act, 2013 shows that

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Heard learned counsel for both the parties and perused

the legislatures, within their wisdom, have parted the "weapons" into four categories i.e "ammunition", "arms", "firearms" and "prohibited arms" and the Act itself provides the legal meaning of each category, legal limitations for possessing / carrying and punishment for contravention thereof. To make things further clear, it would be conducive to reproduce the meanings to such categories, as provided under Section 2 of the Chapter-1 of the Act, which are :-

Section-2(b) "ammunition" means ammunition for any firearm; and includes –

- Rockets, bombs, gun powder, shells, detonators, cartridges, grenades;
- Articles designed for torpedo service and sub-marine mining;
- Other articles containing, or designed or adapted to contain, explosive, fulminating or fissionable material or noxious liquid, gas etc. Whether capable of use with firearms or not;
- Charges for firearms and accessories for such charges;
- Parts and machinery for manufacturing ammunition;

Section-2(c) "arms" means articles, designed as weapons of offence

or defence and includes rifles, pistols, revolvers, grenades, swords, bayonets, and other lethal weapon. It shall also include machinery (and its parts) for manufacturing arms, but excludes articles designed solely for domestic or agricultural purposes and weapons incapable of being used otherwise than as toys or being converted into serviceable weapons;

Section-2(d) "firearms" means weapons designed to discharge a projectile or projectiles of any kind by the action of gun powder or any explosive or other forms of energy and includes –

- Artillery hand-grenades, riot-pistols or weapons of any kind designed for the discharge of any noxious liquid, gas etc;
 - Accessories for any such firearm, intended to diminish the noise or flash caused by the firing thereof;
 - Parts of, and machinery for manufacturing fire-arms; and
 - Carriages, platforms and appliances for mounting, transporting and serving artillery';
- Rockets, bombs, gun powder, shells, detonators, cartridges, grenades;

Section-2(h) "prohibited arms" means :--

- firearms so designed that, if pressure is applied to the trigger, missiles, discharge until pressure is removed from the trigger or the magazine containing the missiles is empty, or
- weapons designed for the emission of any noxious liquid, gas etc, and included artillery, anti-aircraft and anti-tank firearms and such other arms as the Provincial Government may, by notification in the Official Gazette, specify to the prohibited arms;

7. Bare reading of the meaning of the "arms"; "firearms" and "ammunition" would show that same relates to different category of weapons and have defined there. The meaning of "arms" specifically includes rifles, pistols, revolvers, grenades, swords, bayonets and other lethal weapons while no such weapon

has been included in the meaning of the "*firearms*". The word riot-pistol, used in the meaning of "*firearms*" needs not be confused with that of pistols because riot-pistol (or less-lethal launcher) is a type of firearm that is used to fire 'non-lethal' ammunition for purpose of suppressing riots. It is pertinent to mention that deliberate use of the words "*arms, firearms and ammunition*" leaves nothing to doubt the intention of the Legislatures that they mean to categorize weapons.

9. The above position also stands crystal clear from the reading of the Chapter-V of the Act which deals with the offences and Penalties. Therefore, it will be advantageous to reproduce the relevant Penal sections.

Section-23(1) ---Whoever -

- acquires, possesses, carries or control any **firearm or ammunition** in infringement of section 3, shall be punishable with imprisonment for a term which may extend to fourteen years and with fine;
- manufactures, sells, transfers, converts, repairs, tests, or offers for sale or transfer, or possesses for sale, transfer, conversion, repair, test, **any arms or ammunition** in contravention of section 4; or
- sells or transfers, **any firearms** which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by subsection (2) of section 7 or acts in contravention of subsection (1) of that section; or
- brings into, or takes out of, Sindh, **any arms or ammunition** in contravention of section 9; or

- transports **any arms or ammunition** in contravention of Section 10; or
- fails to deposit **arms or ammunition** as required by section 21; or
- being a manufacturer or dealer in **arms or ammunition**, fails, on being required to do so, by rules made under section 39, to maintain a record or to make all such entries as are required by such rules or intentionally makes a false entry or prevents or obstructs the inspection of such record or prevents or obstructs the entry into any premises or other place where **arms or ammunitions** are manufactured or kept, or intentionally conceals such **arms or ammunition** or refuses to point out where the same are manufactured or kept

shall be punishable with imprisonment for a term which may

extend to ten years and with fine

Section-24. Punishment for possessing arms with intent to use for unlawful purposes:-

Whoever possesses arms or ammunition licensed or unlicensed with the aim to use them for any unlawful purpose or to facilitate any other person to use them for any unlawful purpose shall, whether such unlawful purpose has been materialized or not, the license holder, the user and the person who has no license, be punishable with imprisonment for a term which may extent to ten years.

10. The joint reading of the Section-23(1)(a) and Section-24 of the Act would show that the subsection (1)(a) of Section 23 of the Act deals with situation where one acquires, possesses, carries or control any **firearm or ammunition** in contravention of Section 3 (i.e. license for acquisition and possession of firearms and ammunition) while the Section 24 of the Act punishment for possessing arms or ammunition licensed or unlicensed with the aim to use them for

any unlawful purpose. It is germane to append here that plain reading of section 23 and 24, elucidate that section 23 (1) a provides maximum punishment up to 14 years, whereas remaining provides ten years, thus, apparently instant case, wherein recovery is pistol, which falls within the definition of arms as provided in the section 2, which carries maximum sentence ten years as provided in section 24 of the Sindh Arms Act 2013.

11. It is settled principle of law that bail cannot be withheld as punishment, and in cases, where offence does not fall within prohibitory clause, bail is a rule, and refusal is an exception, as held by apex court in case of Tariq Bahir reported in PLD 1995 SC 34.

12. . Reverting to the factual aspect of this case, admittedly all witness are police officials; case is pending before trial court for adjudication of guilt; accused is no more required for further investigation; therefore, there is no likelihood of tempering in the prosecution case. Moreover, it is surfaced that except this case, he has no previous history of similar nature cases.

13. Keeping in view the facts and the circumstances and the precedent referred above, applicant's case does not fall within the prohibitory clause of subsection (1) of section 497 Cr.P.C and consequently applicant is admitted to post arrest bail subject to furnishing surety in the sum of 50,000 rupees to the satisfaction of trial court.

JUDGE