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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 282 of 2013.

Date of hearing 02.08.2013.	Order with signature of Judge
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1. For orders on office objection.
2. For hearing.

Mr. Muhammad Saleem GN Jessar, Advocate for applicant.
Mr. Naimatullah Bhurgri, State Counsel.

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Through instant application, applicant Ayaz Ali Malano seeks post arrest bail in Crime No.94/2013, registered at P.S Market, under Section 23 (i)(a) of Sindh Arms Act, 2013.

2. Precisely, relevant facts are that the police party headed by ASI Lutufullah Magsi was on patrolling. While patrolling they found a person as suspicious, thereby they apprehended him and from his person search an un-licensed pistol of 30-bore was recovered. The accused alongwith property was brought at Police Station; such F.I.R was lodged on behalf of the State and after investigation he was sent up for trial to the concerned Court.

3. Learned counsel for the applicant, *inter alia*, contended that instant case falls within the definition of "arms" as provided in section 2 of Sindh Arms Act 2013; whereby, maximum punishment is upto ten years as provided in section 24. He further contended that case is pending for adjudication of guilt; the applicant is no more required for further investigation and he has no previous criminal record; there is no likelihood of tampering with the prosecution evidence and applicant has no previous history of same nature cases.

4. Learned counsel for the State argued that by new enactment legislators have intended to curb the misuse of weapons; offence is punishable up to 14 years, thus same falls within prohibitory clause of

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Section 497 Cr.P.C and Section 34 of the Act excludes the applicability of Section 103 Cr.P.C, so he lasted 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, as claimed by the learned counsel for the applicant / accused. The examination of the Sindh Arms Act, 2013 shows that 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 makes 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

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- *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 relate 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" leave nothing to doubt the intention of the Legislatures that they mean to categorize weapons.

8. 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

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stamped or otherwise shown thereon as required by subsection (2) of section 7 or acts in contravention of sub-section (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.*

9. The joint reading of 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 upto 14 years, whereas Section 24 provides upto 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.



10. As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under Section 24 of the S.A.A., 2013, is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of case. The record is also silent as to whether the applicant is a habitual or previous convict, hence all these facts makes the case against him as that of further inquiry.

11. 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 tampering in the prosecution case. Moreover, it is settled principle of law that bail cannot be withheld as punishment.

12. Keeping in view the given circumstances, the applicant has succeeded to make out a case for bail, thus he is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousands) and P.R bond in the like amount to the satisfaction of trial Court.

  
Judge

Ansari/\*