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IN THE HIGH COURT OF SINDH, KARACHI

Present: **Mr. Justice Ahmed Ali M. Sheikh**
Mr. Justice Muhammad Karim Khan Agha

Bail Application No. 201/2016

Muhammad Siddique

V

The State

Bail Application No. 215/2016

Junaid Iqbal Siddiqui

V

The State

Date of hearing	25.02.2016
Date of Order	31.03.2016
Applicants	Through M/s. Abid Zuberi, S. Khurram Nizam, Ayan Mustafa Memon & Rasheed Ashraf, Advocates for applicant in Cr.B.A. No.201/2016 and Mr. Shoukat Ali Shehroze, Advocate for applicant in Cr.B.A. No.215/2016.
Respondents	Through Mr. Saeed A. Memon, Standing Counsel and Mr. Saleem Akhtar Buriro, APG a/w Inspector S. Zahid Bukhari, FIA and Drug Inspectors Ghulam Akbar Qazi & Khursheed Shaikh

ORDER

MUHAMMAD KARIM KHAN AGHA, J. By this common order, we propose to dispose of the above referred bail applications filed by the applicants praying therein to enlarge them on post arrest bail in FIR 73/2015 dated 22/12/2015 which was registered against them under section 23 and 27 read with Section 30 and 34 of the Drugs Act, 1976 lodged at P.S. FIA Anti-Corruption Circle, Karachi.

2. The brief facts of the case are that the FIA received a complaint from the Office of the Provincial Inspector of Drugs Karachi V that it had received credible information pertaining to the flow of spurious / counterfeit / sub-standard / Expired / unregistered drugs/products without any

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license and requested that the FIA take joint action with them to inquire into the matter.

3. According to information one Muhammad Siddique (Applicant No.1) of M/s CSM Pakistan was indulged in selling/distributing/re-packing of suspect products unauthorizedly from his godown situated at Plot No.314, Sector 27, Korangi Industrial Area, Karachi illegally in the local market as well as in other cities which amounted to an offence punishable under Drugs Act, 1976.

4. On receipt of the above complaint, with the approval of competent authority, a raid was conducted by an FIA team along with Provincial Inspectors of Drugs at M/s. CSM Pakistan situated at Plot No.314, Sector 27, Korangi Industrial Area, Karachi.

5. According to the Prosecution on reaching at the above premises Muhammad Siddique Chief Executive Officer of M/s CSM Pakistan (Applicant No.1) was busy in getting manufacturing, repacking, sales/sell and supplies/distribution unauthorizedly/illegally having no legal authority/without license of the following suspected spurious/counterfeit, Sub-Standard, Unregistered drugs:-

S/No.	Name of Drug/Product/Packing-Repacking Material
1	Table Miso
2	Capsul Excit-er-2
3	Capsul Excit-er and others

6. During the raid a huge quantity of above suspected spurious/counterfeit, sub-standard, unregistered medicine/drug were recovered, which were seized under proper seizure memo dated 21.12.2015 by Provincial Inspector of Drugs, Karachi IV, Mr. Ghulam Akbar Qazi on Form-3 as well as drew the samples on Form-2 for the purpose of test analysis in accordance with the Drug Act, 1976 on the spot in presence of witnesses.

7. During the course of initial enquiry it transpired that the recovered drugs belonged to the firm/company M/s. CSM Pakistan through its CEO namely Muhammad Siddique (Applicant No.1) S/o Noor Muhammad, Board of Governors / Directors & others, they used the premises / warehouse / godown, which is unregistered/undeclared/illegal situated at Plot No. 314, Sector 27

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Korangi Industrial Area; Karachi as Manufacturing Store, Sales/Sell and supplies/distribution of suspected spurious/counterfeit, sub-standard, unregistered, smuggled drugs products under the garb of Herbal Products/Food Supplements.

8. On questioning Muhammad Siddique (Applicant No.1) disclosed that he used to get manufactured unregistered medicine Exciter under the garb of Herbal products/Food supplements from M/s. Medi Herb Neuroceuticals situated at Plot No.L-11, Block 22, F.B. Industrial Area, Karachi which was owned by Junaid Iqbal Siddiqui (Applicant No.2).

9. The Federal Drug Inspector got a test/analysis certificate of medicine Excit-er Capsules from Federal Government Analyst, Central Drugs Laboratory and according to test/analyst certificate Capsules Excit-er is **not registered** with the Drugs Regulatory Authority of Pakistan (DRAP) (Director of Registration), Islamabad Government of Pakistan which authority further confirmed that Exciter is declared "Unregistered Drug Product" under the Drugs Act 1976.

10. According to the above the Prosecution as per their case established firm/company M/s. CSM Pakistan its CEO Muhammad Siddique (Applicant No.1) and others in collusion and in connivance M/s. Medi Herb Neuroceuticals, Karachi owned by Junaid Iqbal Siddiqui (Applicant No.2) are involved in illegal/unauthorized Manufacturing, Store, Sales/Sell and supplies/distribution of suspected spurious/counterfeit, Sub-Standard, unregistered, smuggled drugs products, had thereby committed an offence punishable under section 23 and 27 read with Section 30 and 34 of Drugs Act, 1976 which lead to the registration of the aforesaid FIR and the arrest of Applicant No.1 on 22-12-2015 (approx 3 months ago) and Applicant No.2 on 23-12-2015 (approx 3 months ago) for committing the said offenses in connivance with each other.

11. Prior to the present bail applications, the applicants had filed bail applications before the learned Special Court of Drugs Sindh at Karachi, which were both dismissed by a common order dated 30.01.2016.

12. Learned counsel for Applicant No.1 submitted that the Company was an NGO and had nothing to do with the manufacture of the drug known as Exciter but instead was concerned with ensuring that Exciter complied with the relevant quality assurance standards and then market and distribute the same as such it did not fall within the purview of S.23 of the Drugs Act 1976.

13. According to learned counsel Applicant No.1 had entered into an agreement with Applicant No.2 dated 9-1-2009 for 5 years whereby Applicant No.2 agreed to manufacture Exciter and supply the same to Applicant No.1. Such an agreement made it absolutely clear that Applicant No.2 was the manufacturer of Exciter and not Applicant No.1

14. The Applicant No.1 also in support of his contention that he was not the manufacturer referred to a show cause notice dated 19-10-15 which he had received from the Drug Regulatory Authority Pakistan (DRAP) asking him to show cause as to why action should not be taken against him for violating S.23 of the Drugs Act 1976 by selling Exciter. In his reply dated 19-10-15 Applicant No.1 had made it clear that he had purchased Exciter from the Manufacturer (Applicant No.2) and he had stopped selling Exciter when he had received the aforementioned show cause notice and had thereafter recalled Exciter from the market and had requested Applicant No.2 to take back the stocks of Exciter which Applicant No.2 had supplied to Applicant No.1.

15. Even otherwise learned counsel for Applicant No.1 submitted that he had no knowledge that the manufacturer may have used a banned/unregistered substance in the manufacture of Exciter and he could not be held responsible for this failure on the part of the manufacturer which so far as he was aware only manufactured Herbal medicines. He stressed that the offense was not a crime against society which involved white collar crimes and was an offense of an individual nature

16. With regard to S.497 Cr.PC learned counsel for Applicant No.1 submitted that the maximum sentence for the offense under S.27 was 7 years and as such it did not fall within the prohibitory clause and in such cases it was settled law that the grant of bail was the rule. In this respect learned counsel placed reliance on

Tariq Bashir V State (PLD 1995 SC 34), **Sajid Iqbal V State** (2013 MLD 140) and **Alam Zeb V State** (PLD SC 2014 760)

17. On account of the above main reasons learned counsel for Applicant No.1 submitted that he was entitled to post arrest bail.

18. Learned counsel for Applicant No.2 candidly admitted that he was the manufacturer of Exciter up to December 2013 and had been providing the drug to Applicant No.1 up to that time. Thereafter he submitted he had ceased manufacturing the drug and had not provided any further supplies to Applicant No.1. He contended that the 9-1-2009 Agreement relied upon by Applicant No.1 for the manufacture and supply of Exciter to Applicant No.1 was forged and fabricated.

19. In a nutshell his submission was that Applicant No.1 was responsible for the manufacture of Exciter which was seized and not Applicant No.2. He pointed out that Applicant No.2 was not nominated in the FIR, the only evidence against him was the statement of Applicant No.1 who was a co-accused and as such had no evidentiary value in the eyes of the law as it was uncorroborated, as per the recovery memorandum this also indicated that the recovery was made at Applicant No.1's factory and not on Applicant No.2's premises.

20. Applicant No.2 had also received a similar Show cause notice dated 21-10-15 from DRAP which the Applicant No.2 had responded to on 27-10-2015 indicating that Exciter was a herbal preparation and did not require any other substance so it was surprising if any other compound was found in the drug. Applicant No.2 also caste doubt on whether the capsules which were tested had come from him since he supplied orange colored capsules whilst those tested were of red coloured capsules. Again this suggested that whatever drug had been found on the premises of Applicant No.1. had not been supplied by Applicant No.2 notwithstanding the invoices indicating that Applicant No.2 had in fact made such supplies.

21. As with Applicant No.1 Applicant No.2 stressed that since the offense did not fall within the prohibitory clause bail should be granted as a rule.

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22. For all the above reasons learned counsel submitted that Applicant No.2 should be enlarged on post arrest bail.

23. On the other hand learned Standing Counsel and APG on behalf of the State submitted that both the Applicants should be denied post arrest bail.

24. They submitted that the Agreement dated 9-1-2009 linked both the Applicants to the offense which they had carried out in collusion and connivance with each other. They further submitted that Applicant No.1 was not an NGO in the true sense but was in fact a commercial business for profit. That the test results had proven that Exciter was not entirely a herbal product and that it contained banned/unregistered substances under the Drugs Act 1976.

25. According to learned counsel the Applicants were business partners who had not stopped manufacturing or selling the drug contrary to their replies to the show cause notice which was evident from the seizure of the banned substance during the joint FIA and drugs team raid.

26. Learned counsel submitted that the offense did fall within the prohibitory clause as it carried a penalty of up to 10 years in jail. In this respect he placed reliance on **Mohammed Faiz V State** (2015 SCMR 655), and **State V Mohammed Qasim** (1991 PCr.LJ 1856)

27. As such learned counsel submitted that both post arrest bail applications should be dismissed.

28. We have carefully perused the record, considered the law and the submissions of learned counsel at the bar and the case law cited by them.

29. At the outset we would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us.

30. The Applicants have both been charged under S.23 of the Drugs Act 1976 which for ease of reference is set out below:

"S.23 Import, manufacture and sale of drugs.--- (1)
No person shall himself or by any other person on his behalf:--

(a) Export, import or manufacture for sale or sell:

- (i) any spurious drug;
 - (ii) any counterfeit drug;
 - (iii) any misbranded drug;
 - (iv) any adulterated drug;
 - (v) any substandard drug;
 - (vi) any drug after its expiry date;
 - (vii) any drug which is not registered or is not in accordance with the conditions of registration.**
 - (viii) any drug which, by means of any statement, design or device accompanying it or by other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;
 - (ix) any drug if it is dangerous to health when used in the dosage or with the frequency; or for the duration specified, recommended or suggested in the labelling thereof, or
 - (x) any drug in contravention of any of the provisions of this Act or any rule;
- (b) manufacture for sale any drug except under, and in accordance with the conditions of, a license issued under this Act;
 - (c) sell any drug except under, and in accordance with the conditions of; a license issued under this Act;
 - (d) import or export any drug the import or export of which is prohibited by or under this Act;
 - (e) import or export any drug for the import or export of which a license is required, except under, and in accordance with the conditions of, such license;
 - (f) supply an incorrect, incomplete or misleading information, when required to furnish any information under this Act or the rules;
 - (g) peddle, hawk or offer for sale any drug in a park or public street or on a highway, footpath or public transport or conveyance;
 - (h) import, manufacture for sale, or sell any substance, or mixture of substances, which is not a drug but is presented in a form or a manner which is intended or likely to cause the public to believe it to be a drug;**
 - (i) sell any drug without having a warranty in the prescribed form bearing the name and batch number of the drug issued,--

- (i) in the case of a drug manufactured in Pakistan, by the manufacturer holding a valid licence to manufacture drugs and permission to manufacture that drug or by his authorized agent;
- (ii) in the case of an imported drug, by the manufacturer or importer of that drug or, if the drug is imported through an indenter by such indenter;
- (j) apply in incorrect batch number to a drug.

(2)Nothing in sub-section (1) shall apply to the manufacturer or subject to prescribed conditions, of small quantities of any drug for the purpose of clinical trial, examination, test, analysis or personal use.”(bold added)

31. It would appear that S.23 (1) (a) (vii) and (h) are the most relevant provisions of S.23 based on the FIR and show cause notice.

32. Applicant No.1 contends that he was not a manufacturer of the drug and is therefore not liable under S.23 and is totally innocent of any wrong doing

33. A brief review of the material before us indicates that Applicant No.1 was ordering Exciter from Applicant No.2 and stocks of the drug were found on his premises which all tested positive for a banned/unregistered substance. It is an admitted position that Applicant No.1 obtained the drug for quality assurance and would then market it and sell it. Thus such sale of the drug would bring the Applicant within the ambit of S.23 even if he was not manufacturing it. In fact a brief review of the material before us indicates that Appellant No.1 may have even been manufacturing the drug after it was received from Applicant No.2. Even otherwise common sense dictates that once the Applicant No.1 became aware through the show cause notice that the drugs contained banned/unregistered substances he should have destroyed them or returned them to the manufacturer however he did neither which is a strong indication that he still intended to sell them notwithstanding his lame excuse of requesting Applicant No.2 to take back and collect the stock once he had been caught by the Drug Inspectors

34. As such Applicant 1 has a defined role which connects him to the commission of the crime.

35. With regard to Applicant No.2 he contends that he is not the manufacturer of the drug and that he is completely innocent. It is however an admitted position that he used to supply Exciter to Applicant No.1 which allegedly was a herbal based medicine up to December 2013. However on examination it was revealed that Exciter contained a banned/unregistered substance. Invoices also show that he was supplying it to Applicant No.1 and he has not adduced any evidence to show that the Agreement dated 9-1-2009 between Applicant No.1 and No.2 whereby Applicant No.2 was to manufacture and supply Exciter to Applicant No.2 was false. Furthermore, the samples of Exciter taken at Applicant No.2's premises tested positive for a banned/unregistered substance. Thus, as can be seen the statement of a co-accused is not the only material against Applicant No.2

36. As such Applicant 2 has a defined role which connects him to the commission of the crime.

37. When taken in a holistic manner the material before us prima facie establishes that both the Applicants had a business relationship which concerned the manufacture and sale of a banned/unregistered substance to the public in violation of S.23 of the Drugs Act 1976.

38. It is also important to consider that the drugs have already been found through tests to be in violation of S.23, it is not in dispute that the drug was not registered as was required under S.23 and it appears prima facie from the material before us that Applicant No.1 was the seller and potentially the manufacturer of the same, whilst Applicant No.2 was at least the manufacturer.

39. In fact based on the submissions made before us by each counsel on behalf of the Applicants it appears that each of the Applicants have now turned on each other and have now blamed the other for the manufacture and sale of the drug with each alleging applicant claiming to be entirely innocent

40. The next issue is whether the offense falls within the prohibitory clause of S.497 Cr.PC. S.497 is reproduced as under for ease of reference.

"S.497. When bail may be taken in case of non-bailable offence. (1) When any person accused of any non-

bailable offence is arrested or detained without warrant by an officer in charge of a police-station or appears or is brought before a Court, he may be released on bail, **but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.**" (bold added)

41. The significance of this clause is that if the Applicants can show that their case does not come within the prohibitory clause then they are entitled for bail which as per the dictum in **Tariq Bashir V State** (PLD 1995 SC 34) will mean that as a general rule bail should be granted.

42. As such we need to consider S.27 of the Drugs Act 1976 which sets out the penalty for an offense under S.23. S.27 reads as under:

S. 27. Penalties.---(1) Whoever, himself or by any other person on his behalf;--

(a) exports, imports, **manufactures for sale or sells any spurious drug or any drug which is not registered.**

(b) Manufactuers for sale any drug without a licence; or

(c) imports without licence any drug for the import of which a licence is required;

shall be punishable with imprisonment for a term which shall not be less than three years **or more than ten years** and with fine which may extend to one lakh rupees;

Provided that the Drug Court may, for any special reasons to be recorded, award a sentence of imprisonment for a term of less than three years." (bold added)

43. A bare reading of S.27(1) in our view would bring S.23 within the ambit of S.497 since on conviction the Applicants could be sentenced to 10 years imprisonment. We are of the view that although under S.27 (2) the Applicants could also be convicted for a term which may extend to seven years since their case is covered by S.27 (1) we consider that S.27 (1) is the applicable sentencing *clause based on the facts and circumstances of this case and in particular as considered later in terms of the nature of the crime.*

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44. Learned Counsel for applicant No.1 referred us to the case of **Sajid Iqbal V State** (2013 MLD 140) for the proposition that minimum sentence should be taken into consideration when determining whether the offense falls within the prohibitory clause.

45. Since this cited case has been passed by the Hon'ble Lahore High Court it is not binding on us and is only of persuasive value.

46. In our view, with utmost deference and respect to the Hon'ble Lahore High Court, in cases such as this, which concern crimes against society and are of extreme gravity (bearing in mind the huge quantities recovered and potential injury which could have been caused to a large number of citizens) the lesser penalty should not apply when determining whether the case should fall within the prohibitory clause. Thus, in our view since the maximum sentence is 10 years the non prohibitory clause will not be applicable and the principle of bail being the general rule will not apply in this case.

47. As such since in our view there are reasonable grounds to connect the accused with the commission of the offense, the nature of the offense and its potential gravity post arrest bail is declined to both applicants.

48. At this juncture we would also like to point out that even if it were considered that the prohibitory clause did not apply then as per **Tariq Bashir's case (Supra)** it is only a general rule that bail should be granted in such cases and as pointed out in that case it could still be denied in such cases if exceptional circumstances exist some of which, **without limitation**, it set out in that case. It is not a rule caste in stone and there may always be exceptionable circumstances which may justify the denial of bail for a bailable offense.

49. In the case of **Imtiaz Ahmed V State** (PLD 1997 SC 545) which was decided after Tariq Bashir's case (Supra) and which considered Tariq Bashir's case the Hon'ble Supreme Court held as under:

"It may be observed that by now it is a well-settled proposition of law that even in respect of offences not falling under prohibitory clause of section 497, Cr.P.C. the Court may decline to admit an accused to bail if there exists a recognized exceptional circumstances.

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This is evident from the judgment of this Court in the case of Tariq Bashir and 5 others v. The State PLD 1995 SC 34, in which some of the exceptional circumstances have been highlighted which warrant refusal of bail in respect of the above offences **but the above exceptional circumstances are not exhaustive**. In this case the learned Special Judge as well as the learned Judge in Chambers have addressed to themselves the above aspect in the aforequoted extracts. The instant case does not involve an ordinary criminal matter. The petitioners, who were holding public offices and who were entrusted with the duty to ensure that the under trial prisoners do not escape, have allegedly actually participated in making possible the aforesaid escapees to escape. The learned Special Judge in his above order dated 26.9.1996 has highlighted that the above five escapees were involved in a number of heinous crimes including murder, dacoity, Hudood cases etc. The escapee Gulsher Jagirnai alone has allegedly been involved in 14 cases. The learned Special Judge in his above order has, therefore, rightly concluded that the above act on the part of the accused persons have endangered public peace and tranquility for a few coins; whereas the learned Judge in Chambers has found that the above case falls within the exception of the rule that the bail is to be granted as a matter of rule in respect of offences carrying less than 10 years R.I. on account of nature of the offence involved. I am inclined to hold tentatively that the above conclusion does not suffer from any legal infirmity.

I may observe that a distinction is to be made between an offence which is committed against an individual like a theft and an offence which is directed against the society as a whole for the purpose of bail. Similarly, a distinction is to be kept in mind between an offence committed by an individual in his private capacity and an offence committed by a public functionary in respect of or in connection with his public office for the aforesaid purpose of bail. In the former cases, the practice to allow bail in cases not falling under prohibitory clause of section 497, Cr.P.C. in the absence of an exceptional circumstance may be followed, **but in the latter category, the Courts should be strict in exercise of discretion of bail. In my view, the above category of the offenders belongs to a distinct class and they qualify to be treated falling within an exceptional circumstance of the nature warranting refusal of bail even where maximum sentence is less than 10 years' R.I. for the offence involved provided the Court is satisfied that prima facie, there is material on record to connect the accused concerned with the commission of the offence involved.**

The Courts should not be oblivious of the fact that at present Pakistan is confronted with many serious problems/difficulties of national and international magnitude, which cannot be resolved unless the whole Pakistani nation as a united entity makes efforts. The desire to amass wealth by illegal means has penetrated in all walks of life. The people commit offences detrimental to the society and the country for money. Some of the holders of the public office commit or facilitate commission of offences for monetary consideration. **In the above scenario the Courts'**

approach should be reformation-oriented with the desire to suppress the above mischiefs. (bold and italics added)

50. The above case was followed by this Court in **Raja Muhammed Zarat V State** (PLD 2007 Kar P.27)

51. In the case of **Shameel Ahmed V State** (2009 SCMR 174) the Hon'ble Supreme Court emphasized that bail could be declined in other wise bailable offenses by observing as under at P.176

"With regard to the contention that the bail should always be granted in cases not falling within the domain of prohibition clause of proviso to section 497, Cr.P.C. **It is observed that it is not a rule of universal application. Each case has to be seen through its own facts and circumstances.** The grant of bail, no doubt, is discretion granted to a Court, yet the exercise of it cannot be arbitrary, fanciful or perverse." (bold added)

52. Traditionally crimes against society were viewed primarily as economic crimes. However with the march of time our Courts have now started to widen the scope of what actually could amount to a crime against society.

53. For example, in the 2011 case of **Mian Arif Hussain V State** (2011 P.Cr.LJ 1944) the sale of soft drinks which were unfit for human consumption was found to be a crime against society in the following terms at P.1948. (In this case post arrest bail was refused on a bailable offense)

"Report of Public Analyst declaring the samples unfit for human consumption clearly suggests that petitioners are involved in the crime against the society injurious to health of public at large attracting the provision of The West Pakistan Pure Food Ordinance (VII) of 1960. Though normally such offences are treated petty offences but how such offences can be said to be of petty nature which causes serious danger to the human health and life. It is need of the day that person involved in such like crime and that too habitual should be dealt with by applying the law with its full force but subject to condition of availability of incriminating evidence." (bold added)

54. Then in the 2012 case of **Ameen Saquib V State** (2012 P.Cr.LJ 577) stealing secret examination papers and assisting cheating was found to be a crime against society in the following terms at P.580.

"It has transpired during the course of investigation that the petitioner along with his co-accused has been found to indulge in purchasing and selling the secret question booklets of the NUST University and in this way not only caused a huge financial loss of rupees three crores to the University but has also impaired the reputation and prestige of the Institution. From all over Pakistan thousands of candidates/students have suffered on account of the conduct of the petitioner and his co-accused. Therefore, the alleged crime can safely be considered to be a crime against the whole society which has caused great loss not only to the University Administration but thousands of candidates/students all over the country and has shaken the confidence of the students over the University which had been enjoying high prestige amongst the Institution in the country. Moreover, in such-like cases the courts should not take lenient view in the matter as the virus of said offence is spreading like a cancer in the society which requires to be curbed with iron hands in order to create an atmosphere of fair and healthy competition amongst the students/candidates. Granting bail to such-like persons would amount to encourage the heinous crimes in the society. Taking the same in view, I am not inclined to grant the post-arrest bail to the petitioner. The same is dismissed." (bold added)

55. Then again in the 2015 case of **Mian Tariq Aziz V State** (2015 PCr.LJ 1066) it was found that the pilferage of gas was a crime against society in the following terms at P.1071.

"This Court in Criminal Miscellaneous No.5171-B of 2013 decided on 18.6.2013 has already held that theft of gas is a pilferage of public property. Again this Court in Criminal Miscellaneous No.13342-B of 2013 has held that keeping in view the prevailing energy crisis, the crime allegedly committed by the petitioner, **may be deemed an offence against the society as a whole, for, every consumer is hit by the scarcity of the gas supply, which is mainly due to the factum of pilferage and malpractices.** The political victimization, as has been argued by learned counsel for the petitioner as a male fide, cannot be considered as available to the petitioner as the raiding party raided the premises of the Industrial concern of the petitioner was consisted upon engineering staff of the Gas Department and, prima facie, no political interference has been pointed out by the petitioner with the help of any material available on record." (bold added)

56. In examining these cases it appears that, in recent times, a crime against society has been expanded to encompass not only economic crimes but any crime which can be shown to be detrimental to society as a whole.

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57. In this case the drugs in question according to learned state counsel may have caused serious injury to vital organs of the body such as liver and heart and may even have caused death.

58. When a citizen is advised by a doctor of medicine to take certain medicines, lotions, etc in order to cure his ailment he is entitled to expect that those medicines will ultimately cure his ailment rather than have no effect on him or make him even more unwell especially as he is paying for these medicines with his hard earned money.

59. Those in society who manufacture or sell unregistered drugs which are potentially dangerous to a citizens health or even life threatening in our view are committing a crime against society. This is more so since such medicines could be sold to men, women and children and both the young and the old who may fall dangerously ill due to this illegal practice where the sole concern of the perpetrators is to make money at the expense of the health of the public at large.

60. Thus, in our view manufacturing or selling drugs or medicines which fall within S.23 of the Drugs Act 1976 amounts to a crime against society and would be one of those exceptions which would justify the refusal of bail in even cases which do not fall within the prohibitory clause of S.497 (1) Cr.PC.

61. As such we are of the view that due to the nature of the offense i.e. a crime against society the Applicants would not be entitled to bail as of right. Rather their case would fall within an exception to the general rule as laid down in **Imtiaz Ahmed's case** (Supra) and they would not be entitled to be enlarged on bail.

62. Thus, for the reasons above we find that both the Applicants are not entitled to post arrest bail based on their case being non bailable and even if it were bailable they would still not be entitled to bail as their case being a crime against society falls into one of the exceptions to refusing bail in bailable cases.

63. Both the post arrest bail applications of both the applicants are therefore dismissed and the order of the Drug Court Sindh dated 30-1-2016 is upheld.

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64. We would like to make it clear that as per settled law on the grant of bail we have only made a tentative assessment of the material placed before us and that this order shall not prejudice the case of any party at trial whose case shall be decided on merits based on the evidence produced at the trial court.

65. Before parting with this order due to the potential severe detrimental effect which illegal drugs under the Drugs Act 1976 may have on all members of society including both the young and the old who are already unwell hence their need for medicines **we hereby direct** the Drug Regulatory Authority of Pakistan and Provincial bodies in Sindh dealing with the regulation of Drugs under the Drugs Act 1976 to take stringent measures to vigorously and effectively enforce every aspect of the Drugs Act 1976 and ensure that no substandard or unregistered drug is sold to the general public.

66. We **further direct** the Drug Court Sindh at Karachi which is hearing this matter to hear the case on an expeditious basis and decide the same within 3 months of the date of this order

67. The office shall provide a copy of this Order to both Secretary Federal Ministry of Health and the Secretary Health Government of Sindh for immediate compliance.

Dated: 31-03-2016