

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No S-433 of 2021

Date	Order with signature of Hon'ble Judge
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1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Ahmed Bux Abro, advocate for the applicant.
Mr. Abdul Ghaffar Kalhoro, Asst. Prosecutor General.

Date of Hearing : 29.09.2021.
Date of decision : 29.09.2021.

ORDER

Omar Sial, J.- Muhammad Ali Solangi has sought post-arrest bail in Crime No. 209 of 2021 registered under sections 4 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 at the Kamber Police Station. Earlier, his application seeking bail was dismissed by the learned Sessions Judge Kamber-Shahdadkot on 14.09.2021.

2. The FIR in the case was registered on behalf of the State by HC Pir Buksh Khohar on 20.8.2021. He recorded therein that a police party led by him was on normal patrol duty when they noticed one person standing on the road with a plastic bag. The person acted suspiciously so he was stopped and searched, and it was found that the bag that he carried contained 10 kilograms of gutka/supari.

3. I have heard the learned counsel for the Applicant as well as the learned Asst. P.G. My observations are as follows.

4. Section 8 of the Act 2019 carries a potential sentence of three years for first time offenders under the Act. The learned APG has confirmed that the Applicant has no crime record let alone having previously committed an offence under the Act of 2019. In this situation, although the punishment for the offence is non-bailable it falls within the non-prohibitory clause of section 497, Cr.P.C and as there are no exceptional or extra-ordinary grounds in the case, the principle enunciated by the Hon'ble Supreme Court in the Tariq Bashir and five

others v. the State reported at PLD 1995 SC 34 will be applicable and the applicant would be entitled to bail as a concession.

5. The FIR is vague as to what exactly was recovered as it makes an oblique reference to gutka/supari being found. Prima facie, supari is not a substance prohibited under the Act of 2019. It is also yet to be seen as to whether the complainant was an "authorized officer" as required by the Act of 2019. The learned counsel's submission that the case was registered against the applicant solely on the ground that the police constables asked him for a packet of cigarette as he runs a cabin at a van station in Kamber and upon his refusal they got angry and registered a completely false case against him. This assertion cannot be conclusively ruled out at this stage.

6. In view of the above, the applicant is admitted to post-arrest bail subject to his furnishing a solvent surety in the amount of Rs.15000/- and a P.R. Bond in the like amount to the satisfaction of the learned trial court.


JUDGE 29/9/24