

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA. Criminal
Bail Application No.S- 152 of 2022.

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

1. For orders on office objection as flag A.
2. For hearing of bail application..

11.4.2022.

Mr. Shahbaz Ali Brohi, advocate for the applicant.
Mr. Ali Anwar Kandhro, Addl. P.G.

ORDER

Muhammad Saleem Jessar, J -Through this application, Applicant seek his admission on post arrest bail in Crime No.61 of 2021, registered at Police Station Mian Jo Goth, u/s 8 of the Sindh Prohibition of Preparation Manufacturing, Storage, Sale and use of Gutka and Mainpuri Act, 2019 (Sindh Act No.III, 2020) (The Act). Earlier, the bail plea raised by the applicant before first forum has been declined by the learned 1st Additional Sessions Judge/MCTC, Shikarpur in terms of order dated 18.03.2022; hence, has approached to this Court.

2. Since the facts of prosecution case are already mentioned in F.I.R, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2020 (herein after referred as Act, 2020) is three years hence, does not exceed limits of prohibitory clause of Section 497(i) Cr.P.C. He further submits that applicant is first offender, therefore, he deserves leniency. He next submits that in such like cases grant of bail is a rule while refusal will be an exception. He therefore, prays that applicant may be granted bail.

4. Conversely, learned Addl. P.G appearing for the State, does not oppose the bail application.

5. Heard learned counsel for applicant, learned Addl.P.G for the State and perused record as well as Act, 2020.

6. It appears that applicant has been shown to have in possession of Gutka Mainpuri Supari which he allegedly was transporting and subsequently was intercepted and apprehended by police. The allegation

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leveled by prosecution in the F.I.R falls within the definition of sections 3, 4, 5, 6 and 7 of the Act, 2020, which are punishable u/s 8 of the Act, 2020. For sake and convenience, it will be appropriate to reproduce section 8 of said Act which reads as under:-

<p>8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lacs (two hundred thousand) rupees.</p>
<p>(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees.</p>

7. Prima facie, the punishment u/s 8 (1) as provided by the Act, 2020, is three (03) years which does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of Tarique Bashir & 5 others v. The State (PLD 1995 SC page 34) and Muhammad Tanvir and another v. The State (PLD 2017 SC page 733).

8. In view of the above legal position, I am of the view that applicant has successfully made out a good prima facie case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, Applicant Zahid Ali S/O Barkat Ali Brohi is admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of trial Court.

9. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE