

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 507 / 2020
Akram S/o Jumoon

Date

Order with signature of Judge

For hearing of bail application.

16.04.2020.

Mr. Irfan Gul Memon Advocate for Applicant.
Mr. S. Meeral Shah Bukhari Additional Prosecutor General.
IO/ SI Khadim Hussain.

Through this bail application, the Applicant seeks post arrest bail in FIR No. 70/2020 registered at P.S. Sujawal, District Thatta under Section 3, 4 & 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The bail application of the Applicant moved before the Trial Court stands dismissed vide order dated 01.04.2020. I have heard the Counsel for the Applicant and learned Additional Prosecutor General and the Investigation Officer. My observations are as under: -

- i) It appears that as per FIR the Applicant was apprehended while driving a rickshaw, wherein, four small sacs and one black shopper was found from his possession which according to the prosecution contained substandard betel nuts allegedly injurious to human health and 50 gutka puris. The FIR was registered on 13.03.2020, whereas, as informed, the samples were forwarded to the laboratory on 18.03.2020 and received by the laboratory on 19.03.2020. This delay of five days has not been explained and while confronted the I.O. is not in a position to justify.

- ii) It further appears that despite passing of almost a month the report has not been received and it is not clear that as to whether the substance found and allegedly recovered from the Applicant is in fact gutka manpuris and is injurious to health.
- iii) It further reflects from the contents of the FIR that there is no brand name or identification of the gutka puri which was allegedly recovered from the Applicant. As of today it is not clear that what was in fact allegedly recovered from the Applicant.
- iv) Even otherwise, the punishment provided under Section 8 of the Act in question is a maximum of three years and does not falls under the prohibition clause.
- v) Though the learned Additional Prosecutor General has opposed the grant of bail on the ground that this Act has been legislated pursuant to certain observations of the Courts regarding use of gutka and manpuri which is injurious to health; however, in the given facts and circumstances of this case, when the chemical laboratory's report has not yet received nor the Court has been assisted as to how much more time would it take, this objection does not appear to be so convincing so as to keep the Applicant behind bars under presumption that he was carrying some material which is injurious to health.
- vi) Even otherwise, the Honourable Supreme Court in Criminal Petition No. 299/2020 while dealing with grant of bail to under trial prisoners in the current pandemic and the lockdown has also approved certain recommendations of the learned Attorney General of Pakistan and the case of the present Applicant apparently also falls within such recommendations.

- vii) As to delay in sending samples for laboratory tests, (though in Narcotics cases but the ratio applies herein as well), it has been consistently held by the Hon'ble Supreme Court and this Court, that such delay is crucial and an accused cannot be convicted once it is established that no safe custody of the material was established. The I/O present in Court has been confronted on this; however, he has not been able to satisfy the Court about delay and how the recovered material was kept in safe custody.

In view of hereinabove facts and circumstances of this case the Applicant has made out a case of further inquiry as to his alleged guilt, and is accordingly admitted to bail on his furnishing surety in the sum of Rs. 30,000/- (Thirty Thousand Only) with P.R. bond in the like amount to the satisfaction of the Trial Court. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law.

J U D G E

Arshad/