

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 608 of 2020

Yasir and Another

vs.

The State

For the Applicants / Accused : Mr. Ghulam Akber Punhoo
Uqaili, Advocate

For the Prosecution / State : Ms. Ehsan Rahat
Deputy Prosecutor General

Date of hearing : 11.05.2020

Date of announcement : 11.05.2020

ORDER

Agha Faisal, J. The applicants seek post-arrest bail in respect of F.I.R. 35 of 2020, registered on 18.04.2020 before P.S. Makli, Thatta, pertaining to offences under Sections 3, 4, 5 and 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 ("Act").

2. Learned counsel submits that the earlier plea for bail by the applicants was rejected by the Court of the learned Additional Sessions Judge Thatta, in Cr. Bail Application 477 of 2020, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

- a. It is alleged that the applicants were arrested while travelling on a motorcycle with two white sacks, containing betel nuts. Per the F.I.R., the recovery of "*JND puris*" is also asserted to have taken place from the side boxes of the motorcycle, however, the F.I.R. does not reveal whether any attempt was made to associate private witnesses for the search³.
- b. Learned counsel for the applicants pleaded entitlement to the concession of bail on the premise that the case was fabricated and recovery foisted thereupon; no independent witness to the alleged search; and even otherwise the alleged offence/s fell within the non-prohibitory clause for consideration of bail.

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

³ *Section 103 Cr.P.C.*

The Prosecution asserted that the applicants were not eligible for the relief sought as ingredients for preparation of *gutka* were recovered therefrom. It was further added that despite samples of the recovered items having been received by the Chemical Examiner on 22.04.2020, no chemical report had been received as of date and in the absence thereof the question of bail could not be considered.

- c. It is pertinent to observe that the very onset that the offences alleged to have been committed carry a maximum sentence of three years. Section 8(2) of the Act envisages an enhanced sentence, for a term between five years and ten years, in case of a subsequent offence, however, per the learned DPG the provision is not attracted in the present facts and circumstances.
- d. The purported recovery consists of betel nuts and “*JND puris*”. Upon query as to the nature of the latter article, the learned DPG responded that the same could only be established once the report of the Chemical Examiner was received. It would suffice to note that, per the Prosecution, the present recovery entails betel nuts and an item, the nature whereof remains to be determined.
- e. It is noted that while the samples were received by the Chemical Examiner over three weeks ago, no report has been received as of date. Upon query, the Court was informed that no specific date could be given for receipt of the report as the said task could presumably take another few weeks.
- f. In the absence of anything on the record to demonstrate whether the recovered articles are actionable under the Act, or otherwise, compounded by the dearth of knowledge as to how much further time would be required to receive the Chemical Examiner’s report, the continued detention of the applicants has not been justified by the learned DPG⁴.
- g. The alleged offence/s admittedly do not fall within the prohibitory clause and it is settled law in such matters the grant of bail is the rule⁵ and its refusal an exception⁶. The Supreme Court has illumined⁷ that in such cases Courts may consider favorably the granting of bail and decline to do so only in exceptional cases. No argument has been articulated by the Prosecution to suggest that any exception is attracted in the present matter.
- h. Upon tentative⁸ assessment of the material⁹ collected by the prosecution, for and against the applicants, it is manifest that the case, pertaining to the involvement of the applicants in commission of the alleged offence/s, merits further enquiry¹⁰, hence, demonstrably qualifying the present matter within the remit of Section 497(2) Cr.P.C. The Supreme Court has

⁴ Per Muhammad Junaid Ghaffar J. in *Akram vs. The State* (Order dated 16.04.2020 Criminal Bail Application 507 of 2020).

⁵ *Muhammad Tanveer vs. The State & Another* reported as PLD 2017 SC 733.

⁶ *Tariq Bashir & Others vs. The State* reported as PLD 1995 Supreme Court 34.

⁷ *Zafar Iqbal vs. Muhammad Anwar & Others* reported as 2009 SCMR 1488.

⁸ *Shahzaman vs. The State* reported as PLD 1994 Supreme Court 65.

⁹ *Asif Ayub vs. The State* reported as 2010 SCMR 1735.

¹⁰ *Awal Khan & Others vs. The State* reported as 2017 SCMR 538.

maintained that in matters requiring further enquiry, grant of bail is the rule rather than the exception¹¹.

- i. In addition to the foregoing, the material placed before the Court does not indicate any criminal record of the applicants, in cases of an identical nature or otherwise; no argument has been articulated requiring the applicants' presence for further investigation at this stage¹² or denoting them as a flight risk; no apprehension has been expressed with regard to tampering of evidence by the applicants or repeating the offence/s, if enlarged on bail¹³; hence, no cause is apparent presently warranting the continued incarceration of the applicants *pendente lite*.

4. Therefore, it is the assessment of this Court that the learned counsel for the applicant has made out a fit case for grant of post arrest bail, hence, the applicants are hereby admitted to bail, subject to furnishing solvent sureties in the sum of Rs.25,000/- (Rupees twenty five thousand only) each and personal recognizance bonds, in the like amount, to the satisfaction of the learned trial Court.

5. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

¹¹ *Muhammad Shafi vs. The State* reported as 2016 SCMR 1593; *Nisar Ahmed vs. The State* reported as 2014 SCMR 27.

¹² *Riaz Jafar Natiq vs. Muhammad Nadeem Dar & Others* reported as 2011 SCMR 1708.

¹³ *Subhan Khan vs. The State* reported as 2002 SCMR 1797.