

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-575 of 2020

Applicant: Asif Ali through Mr. Kirshan Kumar, Advocate.
Respondent: The State through Mr. Shahid Ahmed Shaikh,
Deputy Prosecutor General Sindh.
Date of hearing: 17.08.2020.
Date of order: 17.08.2020.

ORDER

OMAR SIAL, J. - The applicant Asif Ali seeks post arrest bail in crime No.49 of 2020 registered u/s 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Ghutka and Manipuri Act 2019. Earlier, his application seeking bail was dismissed by the learned 1st Additional Sessions Judge, Badin vide his order dated 19.06.2020.

2. Brief facts of the case are that the aforementioned F.I.R. was registered against the applicant and others by the S.H.O. Dehi, Badin on 10.05.2020. The story as narrated in the F.I.R. is that a police party was conducting snap checking in which it stopped one vehicle for checking. Two persons who were sitting in the front passenger seat and the rear seat of the vehicle alighted the vehicle and ran away whereas, the remaining two, which included the applicant (the other being Zubair), were apprehended by the police. By interrogating the two apprehended accused the police got to know that the names of the absconding accused were Ghulam Ahmed and Muhammad Bux Majeedano. The police recovered 20 bags of Ghutka from the car which contained 101,535 packets of Ghutka.

3. I have heard the learned counsel for the applicant as well as the learned D.P.G. Sindh. My observations are as follows:-

- i) Section 4 of the Act of 2019 prohibits the possession, sale, distribution or delivery of ghutka. Section 5 prohibits the

import, export, transport or dispatch of ghutka. Section 8(1) makes the contravention of, *inter alia* the aforementioned two sections punishable with an imprisonment of 1 to 3 years and a fine of rupees 200,000. A higher sentence is provided by section 8(2) for repeat offenders. Section 12 of the Act makes the said offences cognizable, non-bailable and not compoundable.

- ii) There is nothing on the record at the moment to show that the item seized was indeed a prohibited substance i.e. ghutka. The chemical analysis report is vague to say the least.
- iii) There is nothing on record to show that the applicant is a habitual criminal or has indulged in such activities earlier. There is no explanation as to how it was ensured that the seized goods had not been tampered with.
- iv) Two of the co-accused have already been granted bail.
- v) Though the alleged offences are non-bailable, yet they fall in the non-prohibitory clause of section 497 Cr.P.C. It appears that the involvement of the applicant in the alleged offence is one of further inquiry.

4. In view of the above, the applicant Asif Ali son of Muhammad Saleem is granted bail in the instant crime, subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and PR bond in the like amount, to the satisfaction of learned trial Court.

JUDGE