

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

Criminal Bail Application No.S-737 of 2020

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For hearing of main case.

**17.08.2020.**

Mian Taj Muhammad Keerio, advocate for applicant.  
Mr. Nazar Muhammad Memon, Addl: P.G.

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**RASHIDA ASAD, J:** Through captioned bail application, the applicant Amir Hassan seeks post-arrest bail in Crime No.120/2020 registered at P.S Umerkot for offences under sections 4, 5 and 8 of Sindh Prohibition of Preparation, Manufacturing, Storing, Sale and Using of Gutka and Manpuri Act, 2019, after dismissal of his previous bail application by the Court of Ist. Additional Sessions Judge/MCTC, Umerkot vide order dated 30.07.2020.

2. Crux of the case are that on 21.07.2020 at 2330 hours complainant SIP Khalilullah alongwith his subordinate staff during patrolling apprehended the applicant from Umerkot-Chhore road near Gudam Naka and recovered a sack containing 05 packets of JND Gutka, 20 packets of Taaj Mahal Gutka and 10 shoppers of handmade Gutkas, total 2790 sachet of Gutka. Samples were sealed separately and sent for chemical examination. According to prosecution, the recovered substance is injurious to human health.

3. It is, *inter alia*, contended by learned advocate for the applicant that the applicant is innocent and has been falsely implicated in this case by the police; that the case property has been foisted upon the applicant with malafide intention; there is violation of section 103 Cr.P.C; and that the offence with which the applicant is charged carries three (03) years punishment and does not fall within the prohibitory clause of section 497, Cr.P.C. Lastly he prayed for grant of bail to the applicant.

4. Conversely, learned Additional Prosecutor General Sindh opposed the grant of bail to the applicant by stating that the Gutka is hazardous to human health.

5. I have considered the submissions of respective parties and perused material available on record. It appears that sections with which the applicant is charged are not bailable, but their applicability to the facts and circumstances of the case could only be determined at the time of trial. The evidence of the police officials is required to be scrutinized minutely at trial, whether the alleged incident has taken place in a fashion as stated in the F.I.R. or not. Admittedly, there is no independent witness of the incident or mashirs of alleged recovery. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilty but no proper reparation can be offered from his unjustified incarceration, *albeit*, his acquittal in the long run. Reliance is placed on the case of ZAIGHAM ASHRAF vs. THE STATE and others (2016 SCMR 18). The Applicant is behind the bars since his arrest and still trial has not been commenced and he is no more required for further investigation nor the prosecution has claimed any exceptional circumstances, which would justify keeping the applicant behind the bars for an indefinite period. It is fact that all the P.Ws are police officials, hence there is no question of tampering with the prosecution case, therefore, keeping in view the peculiar circumstances of instant case, I am of the opinion that scale tilts in favour of the applicant for grant of bail as no useful purpose is likely to be served with further detention of applicant pending determination of his guilt. Under these circumstances, a case for release of the applicant on bail on the point of further inquiry pending trial, obviously is made out.

6. In view of above, the bail application was allowed and the applicant was granted bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and P.R bond in the like amount to the satisfaction of

learned trial court by my short order announced on 17.08.2020 and these are the reasons for the same.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence upon the trial court while deciding the case of applicant on merits.

JUDGE

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