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

Criminal Bail Application No.S-639 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE

10.08.2020

Mr. Farhad Ali Abro, Advocate for applicant.

Ms. Sobia Bhatti, Assistant Prosecutor General Sindh.

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RASHIDA ASAD, J: Through this application, the applicant Muhammad Saleem seeks post-arrest bail in Crime No.128/2020 registered at P.S Tando Adam City for offences under sections 4-8(i) Sindh Prohibition of Preparation, Manufacturing, Storing, Sale and Using Gutka and Manpuri Act, 2019, after dismissal of his previous bail application by the Court of Assistant Sessions Judge, Tando Adam vide order dated 02.07. 2020.

2.   Brief facts of the case are that on 23.06.2020 at 1900 hours complainant ASI Muhammad Aachar Bhangwar while snap checking of vehicles apprehended the applicant while driving a car, wherein five (05) kattas of Safina Gutka containing 45/45 total 225 packets were recovered which were in total 23625 sachets. 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 Counsel for the applicant that the applicant is innocent and has been falsely implicated in this case by the complainant with ulterior motives and malafide due to political rivalry as his relative had contested election of MPA against one Faraz Dero of ruling party and he was supporter of his relative; that the case property has been foisted upon the applicant; the complainant who is ASI is not empowered to become complainant; that 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.   Learned Assistant Prosecutor General Sindh opposed the grant of bail to the applicant.

5.   I have considered submissions of parties and perused material available on record. The 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 trial. The evidence of the police officials is required to be scrutinized minutely at the time of 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. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilt 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 versus The STATE and others (2016 SCMR 18). Applicant is behind the bars since his arrest and still trial has not been commenced. Applicant is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstances, which would justify keeping the applicant behind the bars for an indefinite period. All the P.Ws are police officials, hence there is no question of tampering the evidence, therefore, keeping in view the peculiar circumstances of instant case, I am of the view 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 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.1,00,000/- (one lac) and P.R Bond in the like amount to the satisfaction of trial court by my short order dated 10.08.2020 and these are the reasons of the same.

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

JUDGE

Ali Haider