

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

Cr. B.A. No. S- 279 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing of main case.

06.04.2020

Mr. Anjum Ahmed, Advocate for applicant.

Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh.

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Muhammad Saleem Jessar, J - Through this application, Applicant seeks his admission on post arrest bail in Crime No. 19 of 2020, registered at Police Station Mulakatiar Tando Muhammad Khan u/s 08 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (Sindh Act No.III, 2020). Earlier, the bail plea raised by applicant before first forum has been declined by Court of Sessions Judge, Tando Muhammad Khan in terms of impugned order dated 25.03.2020 vide Cr. Bail Application No.101 of 2020.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by learned Sessions Judge, Tando Muhammad Khan, therefore, there is no need to reproduce the same.

3. Learned counsel for applicant submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2020 (herein after referred as Act, 2020) is three years hence, does not exceed limits of prohibitory clause of Section 497(i) C.P.C. Learned counsel submits that applicant is first offender, therefore, he deserves leniency. He next submits that in such like cases grant of bail is a rule while refusal will be an exception. He therefore, prays that applicant may be granted bail.

4. Conversely, learned D.P.G appearing on behalf of State opposes bail application on pretext that offence allegedly committed by applicant is against society therefore, he does not deserve any leniency / concession which may entitled him to be released on bail.

5. Heard learned counsel for applicant, learned D.P.G for the State and perused record as well as Act, 2020.

6. It appears that applicant has been shown to have possession of raw mainpuri powder, which he allegedly was transporting and subsequently was

intercepted and apprehended by police. The allegation leveled by prosecution in the F.I.R falls within the definition of sections 3, 4, 5, 6 and 7 of the Act, 2020, which are punishable u/s 8 of the Act, 2020. For sake and convenience, it will be appropriate to reproduce the section 8 of said Act which reads as under:-

8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lacs (two hundred thousand) rupees.

(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees.

7. Since the applicant is first offender and is not a previous convict, therefore, his case purely falls under section 8(i) of the Act, 2020 and does not fall under second proviso to section 8 of the Act, 2020.

8. Prima facie, the punishment u/s 8 (i) as provided by law / Act, 2020, is three (03) years which does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of Tarique Bashir & 5 others v. The State (PLD 1995 SC page 34) and Muhammad Tanvir and another v. The State (PLD 2017 SC page 733).

9. In view of the above legal position, I am of the view that applicant has successfully make out his good prima facie case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, the Applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of trial Court / Court of Sessions Judge, Tando Muhammad Khan.

10. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE