

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

Cr.B.A.No.S- 1097 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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04.12.2013.

Mr. Mehboob Alam Mughal, Advocate for applicant.
Syed Meeral Shah, D.P.G. for the State.

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NAIMATULLAH PHULPOTO, J:- Applicant/accused seeks post arrest bail in Crime No.114/2013 registered at Police Station U/s 23(1) (a) The Sindh Arms Act, 2013.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by complainant ASI Zahoor Ahmed Noonari on 09.09.2013 at 2000 hours are that on 09.09.2013 he alongwith his subordinate staff left Police Station for investigation of Crime No.106/2013 U/s 381-A PPC and at about 1840 hours when reached at Honda Palace where complainant of Crime No.106/2013 u/s 381-A PPC namely Amar s/o Waqar Ahmed Memon met with them, who disclosed that thief of his motorcycle is standing at Irrigation Workshop and waiting for moving. On such information police party alongwith said complainant went to pointed place and reached there at 1900 hours where said complainant told them that he is thief of his motorcycle. On which police party stopped the vehicle, alighted from it, encircled the said person and apprehended him. On enquiry apprehended person disclosed his name as Mushtaque Ali alias Foji s/o Allah Wadhayo by caste Massan r/o originally Sukkur presently Katchi Abadi Qasimabad Hyderabad. Public persons Abdul Razaque and Allah Warayo were acted as mashirs and in their presence accused was arrested and from his personal search, one 30-bore pistol alongwith magazine without number was recovered from his left fold of Shalwar containing four live bullets of 30-bore. Thereafter, accused was asked to produce the license but he failed. Thereafter accused

and case property were brought at Police Station where such FIR against accused for offence under section 23-A of Sindh Arms Ordinance, 2013 was lodged by ASI Zahoor Ahmed Noonari on behalf of the State.

3. After usual investigation, challan was submitted against the applicant/accused u/s 23(1)(a) of The Sindh Arms Act, 2013.

4. Bail application on behalf of the applicant/accused was moved before the trial Court, the same was dismissed by learned Ist Additional Sessions Judge, Hyderabad vide order dated 27.09.2013. Thereafter applicant/accused approached this Court.

5. Learned counsel for the applicant/accused has contended that investigation is complete in this case; all the PWs are police officials hence there is no question of tampering with the evidence. He further submitted that after recovery of 30-bore pistol, it was not sent to the Ballistic expert for report. He has further submitted that maximum punishment of the alleged offence would not be awarded to the applicant/accused looking to the facts and circumstances of the case. In support of his contentions, learned counsel has relied upon the case of Jamal-ud-Din v. State (2012 SCMR 573).

6. Syed Meeral Shah, learned A.P.G. appearing on behalf of the State halfheartedly opposed the bail application.

7. I am inclined to grant bail to the applicant/accused for the reasons that case has been challaned, investigation is complete. Applicant/accused is no more required for investigation. All the PWs are police officials; there is no question of tampering with the evidence; 30-bore pistol allegedly recovered from the applicant/accused has not been sent to the Ballistic Expert for its report. Under section 24 of The Sindh Arms Act, 2013, punishment for possessing arms with intent to use for unlawful purpose has been prescribed which may extend to ten years and with fine. The Court while hearing the bail application is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. I doubt the applicant/accused can be awarded maximum sentence in this case as provided by the Statute. It is an admitted fact that applicant/accused has been

in jail since the date of his arrest yet commencement of his trial is not in sight, would also tilt the scales of justice in favour of bail rather than jail. The Honourable Supreme Court of Pakistan in the case of **JAMAL-ud-DIN v. STATE (2012 SCMR 573)** has observed as under:-

“Without entering into the merits of the case, as the quantum of sentence has to be commensurate with the quantum of substance recovered, we doubt the petitioner can be awarded maximum sentence provided by the Statute. Needless to say that the Court while hearing a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail.”

8. For what has been discussed above, prima facie, the case of the applicant/accused is one of further enquiry as contemplated under section 497(2) Cr.P.C. Consequently, the applicant/accused is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

9. Needless to say that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court at the time of deciding the case on merits.

10. These are the reasons of short order announced by me on 04.12.2013.

JUDGE

Tufail