

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2271 of 2021

Muhammad Tahir

applicant through:

Mr. Muhammad Hanif, advocate

The State,

through:

Mr. Zahoor Shah, DPG

Date of hearing:

30.12.2021

ORDER

Adnan-ul-Karim Memon, J. Through the captioned Bail Application, the applicant Muhammad Tahir is seeking post-arrest bail in FIR No.451/2021 for offences punishable under sections 269, 270 PPC & 8(i) of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale & Use of Gutka and Manpuri, Act 2019, *inter-alia*, on the ground that on the day i.e. 13.09.2021, he was confined by the law enforcement agencies, such report of the incident was made to the competent authority vide receipt of perfect express courier dated 14.09.2021, however his plea was discarded by the trial Court; that the police of Sharafi Goth with malafide intention and ulterior motives registered the FIR No.451/2021 on 16.09.2021 against the applicant in violation of section 14 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale & Use of Gutka and Manpuri, Act 2019 on the premise that they failed to engage lady searcher, while searching the residence of the applicant; besides that no independent witness was cited, who might have seen the alleged recovery from the house of the applicant; that the applicant is in judicial custody since his arrest and he is no more required for further investigation, thus his case falls within the ambit of 497(2) Cr.P.C.

2. Learned counsel for the applicant has supported the version of the applicant and relied upon various documents attached with the memo of bail application and argued that this is a case of hardship and nothing has been recovered from the exclusive possession of the applicant so far as the alleged huge quantity of articles mentioned in the memo of FIR is concerned, thus the applicant is entitled to concession of the post-arrest bail in the aforesaid crime.

3. At this stage, I asked the learned counsel as to why the applicant has a criminal record of similar nature, he replied to the query and submitted that the applicant has been acquitted from such like cases by the competent court of law and relied upon the orders dated 26.09.2019 passed by the learned trial Court acquitting the applicant, order dated 11.03.2020 passed by the learned CNS Court-II Karachi and submitted that nothing more is available against the applicant, therefore, he is entitled to be released on bail. He prayed for allowing the bail application.

4. Learned DPG has opposed the bail application of the applicant on the premise that a huge quantity of items recovered from the possession of the applicant i.e. *Mawa/Gutka* i.e. one *Mawa* packing machine, one *Mawa* mixing machine, one *parless* set, 4/5 small drums containing 100 KG wet betelnuts, 6600 grams tobacco, 20KG *Chona*, 64KG China powder, 04 plastic buckets, 26KG chemical containing in 04 cans, 02 small, 02 big and 06 *Mawa* packing rolls, 04 KG chemical powder, one sack containing 15500 grams prepared *Mawa*, another chemical can weighing 08KG & 400 grams, 09KG china powder, and 02 empty plastic tub, and one packing roll; that there is no enmity of the police with the applicant to book him in the subject crime; that *Gutka/Mawa* is injurious to health and are causing ailment like cancer of mouth. In support of his contentions, he relied upon the positive chemical report and submitted that the applicant if released on bail shall repeat the crime and the public at large will be the most sufferer. Thus, at this stage, he is not entitled to concession of the post-arrest bail.

5. I have heard the learned counsel for the applicant and learned DPG and perused the material available on record.

6. Tentative assessment of record reflects that on 16.09.2021, Complainant ASI Ghulam Mustafa during patrolling on spy information conducted a raid at factory/house situated in Allah Dad Goth, near Ghosia Masjid, Landhi Karachi have apprehended the applicant and recovered from his house items used for the preparation of *Mawa/Gutka* i.e. one *Mawa* packing machine, one *Mawa* mixing machine, one *parless* set, 4/5 small drums containing 100 KG wet betelnuts, 6600 grams tobacco, 20KG *Chona*, 64KG China powder, 04 plastic buckets, 26KG chemical containing in 04 cans, 02 small, 02 big and 06 *Mawa* packing rolls, 04 KG chemical powder, one sack containing 15500 grams prepared *Mawa*, another chemical can weighing 08KG & 400 grams, 09KG china powder, and 02 empty plastic tub, and one packing roll.

7. The learned trial Court while rejecting the post-arrest bail to the applicant vide order dated 28.10.2021 has observed that allegations leveled in FIR are specific and clear in its terms, as police had recovered a huge quantity of *Mawa/Gutka*, betelnuts, and other items which are used for the preparation of *Mawa/Gutka*. Besides that chemical report dated 01.11.2021 explicitly shows that the aforesaid recovered items contained hazardous material and were/are unfit for human consumption.

8. Prima facie, I do not see any malafide intention on the part of police to book the applicant in such a heinous crime which is against the public at large, besides that he has already been charged with a similar kind of offenses, though he might have been acquitted, however, adverse inference at this stage can be drawn against the applicant, so far as alleged huge recovery of the subject items is concerned. However, it is for the trial court to look into this aspect of the case and thresh out pro and contra of the parties while recording evidence of the police and other witnesses as well as the applicant. Mashirnama of recovery also supports the version of the prosecution, besides the chemical report.

9. I have also noticed that this Court in C.P No.D-868/2019 and D-6303-2019 has already passed the directions to the Sindh Government, in this regard; and, the Sindh Government has enacted Sindh Prohibition of Preparation, Manufacturing, Storage, Sale, and Use of Gutka and Mainpuri Act, 2019. For the sake of clarity, the relevant provisions of said law are reproduced below:

“vi. Derivative means any mixture under any name viz. panparag, gutka or such other mixture which is prepared or obtained by any series of operations from the ingredients as given in clause-(viii)

viii. gutka and manpuri means—

(a) any mixture which contains any of the forms of chalia (Betel nut), catechu, tobacco, lime and other materials as its ingredients which is injurious to health and not fit for human consumption within the meaning of section 5 of Sindh Pure Food Ordinance, 1960 and is also in contravention to the provisions of rule 11 of Sindh Pure Food Rules, 1965;

(b) any substance prepared for human consumption and is posing a serious threat to the health of people and includes such substances as Government may, by notification in the official Gazettee, declare to be such substances;

ix. manufacture means in relation to gutka and manpuri of its derivative products includes—

(a) all processed by which such substances or its derivatives may be obtained

(b) making or preparing such substances;”

10. I agree with the observation of the learned trial Court that medical studies have time and again pointed out that Mawa/Gutka is injuries to health and are causing ailments like cancer of mouth.

11. According to the World Health Organization (WHO) in all of South Asia, oral cancer is most prevalent among Pakistani men. While the rate of said cancer has grown up at 4% in the country, it stands to an alarming 30% in Karachi, mostly because of the consumption of addictive substances like *Gutka*. It may not be out of place to point out that according to statistics every 5th (fifth) person in Karachi is addicted to *Gutka*, *Manpuri* and *Mawa*.

12. In view of the above facts and circumstances of the case, I am of the tentative view that the applicant is not entitled to concession of the post-arrest bail, at this stage and in point of time, thus the present bail application merits no consideration and is dismissed.

13. Needless to mention the above observations are tentative and will not prejudice the case of either side on merits.

14. These are the reasons for my short order dated 30.12.2021, whereby the instant bail application was dismissed. However, the learned trial Court is directed to take the prompt decision of the case within a reasonable time i.e. three months, and conclude the same, such compliance report is to be made through MIT-II of this Court.

JUDGE