

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2365 of 2021

Basheer Ahmed,
applicant through:

Mr. Amir Haroon Meo, advocate

The State
through:

Mr. Zahoor Shah, DPG

Date of hearing:

31.12.2021

ORDER

Adnan-ul-Karim Memon, J. The applicant Basheer Ahmed son of Abdul Wadood is seeking post-arrest bail in FIR No.665/2021 of PS Ittehad Town, Karachi registered under Section 23(i) A of the Sindh Arms Act, 2013, *inter-alia*, on the ground that he is innocent; the alleged case property never belonged to him nor was it ever recovered from him; the alleged recovery has been foisted upon the applicant by the police; and, he has been falsely and maliciously implicated by the police in this false and fictitious case. He further contended that admittedly there are no independent witnesses and all the alleged witnesses are police officials, due to which the story of the prosecution cannot be believed. He submitted that the allegations made against the applicant and the case that has been set up against him, are yet to be proved through evidence, therefore, this is a case that requires further inquiry. It was urged that the alleged offense does not fall within the prohibitory clause of Section 497(1) Cr.P.C.; the applicant has not been convicted of any offense in the past; and, he shall neither abscond nor tamper with the evidence in case bail is granted to him. It was further urged that the Bail Application filed by the applicant was wrongly dismissed by the trial Court vide order dated 04.12.2021 without appreciating the facts and evidence on record.

2. Mr. Zahoor Shah, learned Assistant Prosecutor General, Sindh, opposed this bail application by submitting that the applicant was in illegal possession of the weapon that was recovered from him, and he was arrested based on the said recovery. He contended that the allegation made by the applicant against the police officials of foisting a false case is baseless as no enmity with the police officials or malafides on their part has been alleged by the applicant. Regarding the absence of independent witnesses, he contended that bail cannot be granted on this ground. It was urged that the offense committed by the applicant falls within the prohibitory clause of Section 497 Cr.P.C., as Section 23(1)(a) of the Act 2013 provides a maximum punishment of 14 years and fine.

3. I have heard the learned counsel for the applicant and the learned Deputy Prosecutor General Sindh for the State, and have also gone through the record.

4. Since I am concerned with the case registered under section 23(1)(a) of Sindh Arms Act 2013. This Court in a case of Ayaz Ali V/S The State, **PLD 2014 Sindh 282**, after examining and comparing Sections 23(1)(a) and 24 of the Act, was held by a learned single Judge of this Court that Sub-Section 1(a) of Section 23 of the Act deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act (i.e. 'license for acquisition and possession of firearms and ammunition); and whereas, Section 24 of the Act provides punishment for possessing arms or ammunition, licensed or unlicensed, intending to use the same for any unlawful purpose. It was further held that since maximum punishment up to 14 years is provided in Section 23(1)(a) and Section 24 provides punishment up to 10 years, maximum punishment in the case of recovery of a pistol, which falls within the definition of "arms" in terms of Section 2 of the Act, will be 10 years under Section 24 of the Act. It was also held that the question of quantum of punishment has to be determined by the trial Court as to whether the accused would be liable to maximum punishment or not, and in case of his conviction, whether his case would fall under the prohibitory clause or not. It was observed in the cited case that all the witnesses were admittedly police officials, and the accused was no more required for further investigation.

5. In view of the above observations and findings, it was held inter alia that the case was that of further inquiry, and accordingly bail was granted. In more cases; namely, Criminal Bail Application No.1010/2014 (Muhammad Shafique V/S The State) decided on 11.07.2014, this Court observed that the terms "arms" and "firearms" have been separately and distinctly defined in Clauses (c) and (d), respectively, of Section 2 of the Act ; amongst many other articles designed as weapons of offence or defence, "pistols" are included in the definition of "arms" in Clause (c) ibid and not in the definition of "firearms" defined in Clause (d) ibid ; the punishment and penalty for acquiring, possessing, carrying or controlling any "firearm" or ammunition in infringement of Section 3 of the Act, is provided in Section 23(1)(a) of the Act, which is imprisonment for a term which may extend to 14 years and with fine ; and, whereas, the punishment for possessing "arms" or ammunition, licensed or unlicensed, with the aim to use them for any unlawful purpose etc., is provided in Section 24 of the Act, which is imprisonment for a term which may extend to 10 years and with a fine.

6. This Court has held in the aforementioned case that the above clearly shows the intention of the legislature that not only are the offenses concerning "arms" and those relating to "firearms" to be dealt with separately as provided in the Act; but

since punishments having different terms in respect of “arms” and “firearms” have been specified separately in the Act, punishment under Section 23(1)(a) of the Act cannot be awarded for an offense committed under Section 24 of the Act, and vice versa.

7. As observed above, amongst many other articles designed as weapons of offense or defense, “pistols” are included in the definition of “arms” in Clause (c) *ibid* and not in the definition of “firearms” defined in Clause (d) *ibid*.

8. Adverting to the facts of the present case, the prosecution has alleged that the applicant along with his accomplice was allegedly found with the possession of one 30 bore pistol without number along with a magazine containing three live bullets, while another black color pistol of 30 bores was recovered from the applicant, however, his accomplice managed to escape away, however, he was booked and has been challaned under Section 23(1)(a) of the Act, which applies to “firearm or ammunition” and not to “arms”. It will be for the trial court to decide as to whether the provisions of Section 23(1)(a) *ibid* will apply to the applicant’s case or not.

9. It is an admitted position that all the witnesses are police officers and no attempt was made by them to search for independent witness(s) although the applicant was arrested on 20.11.2021 at 0.500 hours and the place of arrest was a common as the main road Baldia Town Karachi. The F.I.R. does not even suggest that the police officials first tried to search for independent witness(s), but when no such witness was found, only then did they search the applicant and prepare the memo of arrest and recovery. Besides that, the case property was sent to the forensic division at a belated stage, and the report was submitted on 03.12.2021 after a considerable period and it is for the trial court to see whether the articles recovered were the same as reported by the Forensic Division Sindh Karachi vide letter dated 03.12.2021.

10. Since the investigation has been completed and the challan has been submitted before the trial Court, the applicant will not be required for any further investigation. In such circumstances, there is no possibility of tampering in the case of the prosecution by the applicant.

11. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense at the time of the trial; and, the trial Court shall have to decide whether the case of the applicant falls within the ambit of Section 23(1)(a) of the Act or not.

12. In view of the above discussion, this is a case that requires further inquiry in my humble opinion, and I am convinced that the applicant has made out a case for the grant of post-arrest bail in the aforesaid crime on the analogy as discussed supra.

13. Foregoing are the reasons for the short order announced by me on 31/12/2021, whereby this bail application was allowed and the applicant was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One hundred thousand only) and PR bond in the like amount to the satisfaction of the Trial Court.

14. It is hereby clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case on merits strictly under the law and conclude the same within two months hence compliance be made through MIT-II of this Court.

JUDGE

Zahid/*