

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

Criminal Bail Application No.S-950 of 2021

Applicants : Ghulam Murtaza Mallah and Javaid Mallah both sons of Abdul Ghani, through Mr. Waqar Ali Laghari, Advocate.

Respondent : The State through Ms. Ramesha Oad, Assistant Prosecutor General, Sindh.

Date of hearing : **11.10.2021**
Date of Order : **11.10.2021**

O R D E R

AMJAD ALI SAHITO, J:- Through the instant bail application, the applicants/accused above named seek their pre-arrest bail in Crime No.225 of 2021, under section 8 of The Sindh Prohibition of Preparation Manufacturing Storage Sale and Use of Gutka and Mainpuri Act 2019, 353, 224, 225, 147, 148 P.P.C, registered at P.P Nasim Nagar P.S. Qasimabad, after their bail plea was declined by the learned Model Criminal Trial Court-I, Hyderabad vide order dated 07.10.2021.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused has pleaded malafide on the part of police and submits that applicants/accused are innocent and the offence as alleged has not been committed by them at all and they have also no concerned or connection with the commission of alleged offence. He further argued that nothing was recovered from applicants even intoxicated material same has been foisted upon them. He also argued that both the applicants/accused are brothers and they are landlords having own agricultural lands in different districts and they are also running their business of fish selling. He also argued that police officials time to time lodged the bogus and baseless FIRs against the present applicants/accused only to manage their criminal record and show them as accused like criminals. He also argued that present FIR is outcome of police enmity against the applicants/accused; that the alleged place is thickly populated area but no private person was associated to act as mashir; that the alleged section is

misapplied and does not fall within prohibitory clause of section 497 Cr.P.C. He lastly prayed for confirmation of interim pre-arrest bail to the applicants/accused. .

4. On the other hand, learned Assistant Prosecutor General, Sindh appearing on behalf of the State vehemently opposed for confirmation of interim bail.

5. I have heard learned counsel for the applicants as well as Assistant Prosecutor General, Sindh and gone through the material available on record.

6. From perusal of record it appears that on the day of incident viz. 25.09.2021 the complainant SIP Ayaz Ali Bughio was present at check post Nasim Nagar wherein he received information that applicant No.1 Ghulam Murtaza Mallah is making intoxicated mainpuries in his house at village Jadal and running such factory/Karkhana by openly selling the mainpuries in the public. On such information the police reached at place of incident and arrested the applicants and secured plastic bag (Katta) on checking they found 1000 mainpuries and out of them 20 mainpuries were separated for chemical examiner and during search proceedings near about 20/25 unknown persons gathered there and forcibly intercepted in their official duty and took away the arrested accused persons with them. Recently the divisional bench of this Court also prohibited for purchasing and selling of mainpuries and Gutka and such act 2019 was also introduced which endorsing the fact that mainpuri and Gutka is dangerous to the health. Learned counsel for the applicants/accused failed to point out any ill-will or malafide with ulterior motives on the part police which is the requirement for grant of pre-arrest bail. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan *[2019 S C M R 1129]* wherein the Hon'ble Supreme Court of Pakistan has held as under:

“Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law.”

7. At bail stage only tentative assessment is to be made. Sufficient material is available on the record, which connect the applicants with the alleged offence. In view of above discussion, the applicants/accused has failed to make out a good case for

confirmation of interim pre-arrest bail. Consequently, the bail application is dismissed and the interim pre-arrest bail earlier granted to the applicants/accused vide order dated 22.10.2021 is hereby re-called.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

*Muhammad Danish**