



4. Learned Deputy 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 on the basis of the said recovery; that the allegation made by the applicant against the police officials of foisting a false case, is baseless; that offence committed by the applicant falls within the prohibitory clause of Section 497 Cr.P.C. as Section 23(1)(a) of the Act provides maximum punishment of 14 years and fine; that number of criminal cases are pending against the applicant, hence he prayed for dismissal of the instant bail application.

5. Heard and perused the record.

6. In a case authored by me, which is reported as *Ayaz Ali V/S The State, PLD 2014 Sindh 282*, wherein after examining and comparing Sections 23(1)(a) and 24 of the Act, it was held 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, with the aim 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. 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 the present case, admittedly all the witnesses are police officers and no attempt was made by them to search for independent witness(s) although applicant was arrested at 12:30 a.m. from a

place which was a common thoroughfare. 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 they themselves searched the applicant and prepared the memo of arrest and recovery.

7. Since investigation has been completed and 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. 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. Argument regarding pendency of criminal cases against accused is concerned, it does not ipso-facto disentitle the accused for grant of bail, if otherwise he is entitled for bail. Nothing has come on record that applicant is convicted in any other criminal case. In view of the above discussion, this is a case which requires further inquiry, accordingly applicant has made out a case for the grant of bail.

8. For the foregoing reasons, Muhammad Akbar Magsi, the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and a P.R. Bond in the like amount to the satisfaction of the trial Court.

9. The observations made hereinabove shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case on merits strictly in accordance with law.

JUDGE

Sajid