

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

Cr.B.A.No.S- 938 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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25.11.2013.

Mr. Farhad Ali Abro, Advocate for applicant.
Mr. Mushtaque Ahmed Abbasi, D.D.P.P.

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NAIMATULLAH PHULPOTO, J:- Applicant/accused Muhammad Rafique seeks post arrest bail in Crime No.98/2013 registered at Police Station Tando Jam U/s 23(1) (a) The Sindh Arms Act, 2013.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 21.07.2013 ASI Muhammad Sharif Rajper of Police Station Tando Jam left alongwith his subordinate staff for investigation of Crime No.96/2013 registered at Police Station Tando Jam U/s 393 PPC. Police party after patrolling, when reached near Ammar Town main road, present accused nominated in aforesaid crime was found standing and he was waiting for vehicle. He was surrounded and caught hold. ASI, inquired the name of accused to which he disclosed his name as Muhammad Rafique s/o Ali Akbar by caste Hazaria. He was arrested in Crime No.96/2013 U/s 393 PPC and his personal search was conducted in presence of the mashirs. From the left side fold of his Shalwar, one T.T. Pistol 30-bore containing two live bullets in magazine was recovered. Applicant/accused had no license for the weapon carried by him. He was arrested. Such mashirnama was prepared in presence of the mashirs PCs Barkat Ali and Khuda Dino. Thereafter, accused and the case property were brought at Police Station where FIR against the accused under above referred section was registered.

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 Vth Additional Sessions Judge, Hyderabad vide order dated 30.09.2013.. 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. Mr. Mushtaque Ahmed Abbasi, learned D.D.P.P. 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.

JUDGE

Tufail