

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

Cr. Bail Appl. No.S-450 of 2022

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on office objection  
For hearing of main case

**22.04.2022.**

Mr. Mashooque Ali Mahar advocate for applicant.  
Ms. Rameshan Oad, A.P.G. for the State.

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**ZULFIQAR AHMED KHAN, J:** Through this bail application, the applicant/accused Muhammad Asif seeks post arrest bail in Crime No.19 of 2022, registered at PS Kadhan, District Badin, for offence under section 8 of SPPMSS and use of Ghutka & Main Puri Act, 2019. Earlier on approach his bail application was declined by learned Jnd. Additional Sessions Judge, Badin vide order dated 25.03.2022.

2. On 24.02.2022 SHO/SIP Muhammad Qasim Panhwar of Police Station, Kadhan, while on patrolling within the jurisdiction has arrested the applicant and recovered from his possession 08 bags containing 50 Safian Ghutka packets total (400) packets, found it hazardous and in violation of law took into possession and then registered the above F.I.R.

3. Learned counsel for the applicant, at the very outset, submits that applicant is innocent and was involved by the police with malafide intention; that all the witnesses are police officials and are sub-ordinate to the complainant; that no private mashir was associated in the recovery proceedings; that section 8 of SPPMSS is punishable up to three years, hence the offence does not fall within prohibitory clause of section 497,Cr.P.C, hence the applicant is entitled for grant of bail. In support of his contention, he relied upon the case of Muhammad Eidan vs. State (2022 P.Cr.L.J. 143).

4. On the other hand learned D.P.G. submits that applicant has committed the offence which is heinous one and against the society; that mere on the ground that the offence not falling within prohibitory clause of section 497, Cr.P.C, no one is entitle for grant of bail automatically; that huge quantity of hazardous material was recovered from the applicant, therefore, the applicant is not entitled for the concession of bail.

5. I have heard learned counsel for the applicant as well as DPG for the State and have gone through the material available on record with their assistance.

6. Record reflects that alleged recovery was affected from the populated area but no private person was associated as witness in the recovery proceedings nor the complainant tried. All the witnesses are police officials, therefore, there is no apprehension of tempering the evidence. The investigation of the case is completed and the challan has already been submitted before the Court having jurisdiction, therefore, the custody of applicant is no more required for further investigation.

7. In view of above circumstances, I am of the view that since the section 8 ibid provides punishment up to three years but shall not less than one year and fine of rupees two lacs. It is settled by now that while deciding the question of bail lesser sentence is to be considered. In Shahmor's case 2006 YLR 3167 while considering the lesser punishment provided for the alleged offence for which the applicant is charged, the same provided maximum punishment up to 03 years which even does not fall within prohibitory clause of section 497, Cr.P.C. and grant of bail in these case is right while refusal is an exception as has been held by Hon'ble Supreme Court of Pakistan in the case of TARIQ BASHIR vs. STATE (PLD 1995 SC 34), ZAFAR IQBAL v. MUHAMMAD ANWAR (2009 SCMR 1488).

8. From the tentative assessment of the record, the applicant has made out his case for further inquiry. Resultantly, this bail application is allowed and applicant is granted bail subject to his furnishing his solvent surety in the sum of Rs.10,000/- (Ten thousand only) and PR bond in the like amount to the satisfaction of the trial Court.

The above bail application is disposed of in the above terms.

JUDGE