

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Bail Application No. 133 of 2022

Applicant : Mumtaz Alam s/o Riaz Muhammad, through
M/s. Amjad Ali Gabol and Arif Ali Abbasi,
advocates

Respondent : The State, through Mr. Shafi Muhammad
Mahar, Deputy Prosecutor General.

Date of hearing: 27.06.2022
Date of order : 27.06.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Mumtaz Alam s/o Riaz Muhammad seeks post-arrest bail in Crime No. 21/2022 registered at P.S. Khambra, District Ghotki, under Section 23(1)(a), Sindh Arms Act, 2013 (“**the Act**”). His earlier application for the same relief bearing No. 351/ 2022 was dismissed by the Court of Additional Sessions Judge/MCTC Ubauro vide order, dated 14.03.2022.

2. As per F.I.R., on 06.03.2022 at about 1100 hours, at Gudu link road near Punhoon Khan Patrol Pump, police party headed by ASI Bajhi Khan Sawand, during patrolling under Roznamcha Entry No.35, at 0730 hours, arrested present applicant alongwith co-accused Ali Khan, who were riding on a motorcycle, on recovery of one unlicensed pistols with 50 live bullets, for that he was booked in the aforesaid F.I.R.

3. After hearing the learned counsel for the applicant as well as D.P.G. and perusing the material available on record, it appears that police has misapplied section 23(1)(a) of the Act, as the “pistol” does not come within the definition of “*firearm*” or “*ammunition*” referred to in section 23(1)(a) of the Act, and defined under section 2(d) and 2(b) of the Act, respectively, but within the definition of “*arms*” as defined under section 2(c) of the Act, for that the punishment has been

provided under section 24 of the Act with imprisonment for a term which may extend to 10 years and with fine.

4. It further appears that the applicant is confined in judicial custody for last more than three months and the prosecution has already submitted the challan against him; hence, his physical custody is no more required for investigation purpose. Under Section 24 of the Act, the punishment for possessing unlicensed arms may extend to 10 years. The discretion is; however, left open with the trial Court by the legislature either to award maximum punishment to the accused or to award lesser punishment keeping in view the surrounding circumstances commensurate with the nature of the case.

5. In the instant case, it is an admitted position that the police party apprehended the applicant during patrolling in day time at 11:00 a.m. from Guddu Link Road near Punhon Khan Petrol Pum, which is located in a thickly populated and commercial area, but police failed to make his search in presence of private mashirs and it has not been mentioned in F.I.R. if the arranging of private mashirs for the search of the applicant was not possible for any reason. It is also an admitted position that recovery of alleged weapon was made on 06.03.2022, but the same was sent to Forensic Science Laboratory on 15.03.2022 after a delay of nine days for which no plausible reason or cause has been furnished by the prosecution, which is lapse on the part of the prosecution. It further appears that as per *Mashirnama of Arrest and Recovery* at one side of the alleged pistol, words “MOD. 92FS. CAL 30 Parabellum Patented” and on the other side words “ Beretta USA Corp Ackk MD. Made in USA” were engraved, which fact is not mentioned in the F.I.R. as well as in the report of Forensic Division Sindh, Larkano; hence, it is yet to be determined if the same pistol allegedly recovered from the possession of the applicant, was sent to Forensic Division. Under the circumstances, no reason exists for keeping the applicant behind the bars, when sufficient

irregularities have appeared in the case of the prosecution, creating doubt in the prosecution case calling further inquiry in terms of sub-Section (2) of Section 497 Cr.P.C entitling the applicant for grant of bail.

6. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. In case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

CrI. Bail application stands disposed of.

JUDGE

Faisal Mumtaz/PS