ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1267 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objections.
2. For hearing of main case.

01.12.2022.

Mr. Hemandas S. Sanghani, Advocate for applicants.
Ms. Sana Memon, Assistant P.G.

O R D E R

Muhammad Saleem Jessar, J, - Through this application, applicants Gul Hassan and Imam Ali seek their admission on post arrest bail in Crime No.71 of 2022, registered at Police Station Dehi for offence under Section 8 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (Sindh Act No.III, 2020). Earlier, the bail plea raised by applicants before first forum has been declined by Court of learned Sessions Judge, Badin vide impugned order dated 03.11.2022 passed in Criminal Bail Application No.1814 of 2022.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by learned Sessions Judge, Badin; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. Learned Counsel for applicants submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (herein after referred as Act, 2020) is three years; hence, does not exceed limits of prohibitory clause of Section 497(i) C.P.C. Learned Counsel submits that applicants are first offenders, therefore, they deserve leniency of bail.

4. On the other hand, learned Assistant P.G appearing on behalf of State opposes bail application on the pretext that offence committed by applicants is against society; hence, they do not deserve any leniency / concession of bail. She further submits and admits that applicants are first offenders and their case fell within the ambit of first proviso to Section 8 of Act and does not exceed limits of prohibitory clause of Section 497 Cr.P.C.

She further admits that police file is also silent whether the applicants had indulged in identical crime prior to this one or otherwise.

5. Heard learned Counsel for respective parties and have gone through the record available before me as well as perused the Act, 2020.

6. It appears that applicants are shown to have in possession of raw mainpuri / Gutka powder, which they allegedly were transporting and subsequently were intercepted and apprehended by police. The allegation leveled by prosecution in the FIR falls within the definition of Sections 3, 4, 5, 6 and 7 of the Act, 2020, which are punishable under Section 8 of the Act, 2020. For sake of convenience, it will be appropriate to reproduce the Section 8 of said Act which reads as under:-

> *"8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lacs (two hundred thousand) rupees.*
>
> *(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees".*

7. Since the applicants are first offenders and are not previous convicts; therefore, their case purely falls under Section 8(i) of the Act, 2020 and does not fall under second proviso to Section 8 of the Act, 2020. Prima facie, the punishment under Section 8(i) as provided by law / Act, 2020, is three (03) years which does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of TARIQUE BASHIR & 05 others v. The STATE (PLD 1995 SC page 34) & MUHAMMAD TANVIR and another v. The State (PLD 2017 SC page 733).

8. In view of the above legal position, I am of the opinion that applicants have successfully made out their good *prima facie* case of further inquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, the applicants are admitted to bail subject to their furnishing

solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) each and P.R Bonds in the like amount to the satisfaction of learned trial Court.

9. It is pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Shahid