

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No.1054 of 2023

Applicant : Muhammad Imran s/o. Taj Muhammad,
through Mr. Afzaal Ahmed, Advocate

Respondent : The State, through Mr. Zahoor Ahmed
Shah, Additional Prosecutor General.

Date of hearing : 12.06.2023
Date of order : 12.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Muhammad Imran s/o Taj Muhammad seeks post-arrest bail in Crime No.100/2023, registered at P.S. Mochko, Karachi, under Section 23(1)(a), Sindh Arms Act, 2013 (**the Act**). His earlier application for the same relief in Crl. Bail Application No.1549/2023 was dismissed by the learned XIth Additional Sessions Judge West, Karachi vide order, dated 20.04.2023.

2. Briefly stated the facts of the prosecution case, as unfolded in the F.I.R., are that on 22.03.2023 at about 0930 hours at main Hub River Road, Mochko Check Post, Rais Goth Mochko, police party headed by ASI Muhammad Abbas apprehended the applicant in Crime/F.I.R No.99/ 2023, under section 353, 324, P.P.C. and recovered from his possession one unlicensed Pakistan made 30 bore pistol, without number, with magazine and three live bullets, for that he was booked in the aforesaid Crime.

3. After hearing the learned counsel for the applicant as well as A.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, as defined under section 2(b) and 2(d) 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 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 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 at main Hub River Road, which is located in a thickly populated 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 an admitted position that as per F.I.R, the alleged recovered pistol was “without number”, while as per sketch of the pistol, available on the back side page of the memo of recovery and arrest, the pistol bears description as “MADE AS CHINA- NORINCO- CAL-30- BORE-SPECIAL- MODIFIED”, while as per report of Forensic Division the pistol was with “rubbed number”. It is not mentioned in the F.I.R. if the pistol was with rubbed number. The above-mentioned description noted in the sketch is neither mentioned in the F.I.R. nor in the report of Forensic Division. Such lapse on the part of the prosecution creates reasonable doubt about alleged recovery of the pistol. No reason exists for keeping the applicant behind the bars, when

sufficient illegalities and irregularities have appeared in the case of the prosecution, which have created doubt in the prosecution story; benefit of which would go to applicant, who is in circumstances entitled to bail. 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 Lac only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

6. 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.

7. Above are the reason of my short order dated 12.06.2023.

JUDGE

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