

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 729 of 2023

Applicant : Ali Raza s/o. Ghulam Yaseen, through
Mr. Imtiaz Ali, advocate

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

Date of hearing: 22.06.2023
Date of order : 22.06.2023

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Ali Raza s/o. Ghulam Yaseen seeks post-arrest bail in 08/2023 registered at P.S. Khokhrapar, Karachi under Section 23(1)(a) of Sindh Arms Act, 2013 (**the Act**). His earlier application for the same relief bearing No. 881 of 2023 was dismissed by the Court of Additional Sessions Judge-III, Karachi-East vide order, dated 02.03.2023.

2. As per F.I.R., on 11.01.2023, at about 9:30 p.m., at Pak Star Ground near Saudia Colony, Khokhrapar, Karachi police party headed by S.I.P. Muhammad Khan of P.S. Khokhrapar, Karachi arrested the applicant on being found in possession of one unlicensed 9mm pistol loaded with two bullets, for that he was booked in the aforesaid F.I.R.

3. After hearing the learned counsel for the applicant as well as Addl. 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 as per report of Assistant Inspector General of Police, Forensic Division, Sindh Karachi the alleged recovered pistol was not found in working condition at the time of its examination; therefore, the police submitted Charge Sheet against the applicant under Section 25 r/w Section 23(1) (a) of the Act. Section 25 (*ibid*) reads, as under:

25. Punishment for use and possession of firearms or imitation firearms in certain cases. *Whoever uses or attempts to use firearm licensed or unlicensed or an imitation firearm with the purpose to commit any crime, any unlawful act or to resist or prevent his lawful arrest or detention or of any other person shall be punishable with imprisonment for a term which may extend to ten years and with fine.*

Explanation.- The expression “imitation firearm” has the same meaning as in section 5.

Section 5 of the Act provides, as under

5. Import, export and transportation. *No person shall bring into or take out of Sindh or any of its districts, arms ammunition or military stores of a firearm or convert an imitation firearm into a firearm unless a licence has been issued in accordance with the provisions of this Act and the rules.*

Explanation.- The phrase “imitation firearm” implies anything which has the appearance of a firearm, whether it is capable of discharging any shot, bullet or other missile or not.

(Emphasis supplied)

5. It appears from the perusal of the provision of Section 25 (*ibid*) that it applies on the use or attempt to use firearm licensed or unlicensed or an imitation firearm with the purpose to commit any crime, any unlawful act or to resist or prevent his lawful arrest or detention or of any other person. The phrase “imitation firearm” under Section 5 (*ibid*) implies anything which has the appearance of a firearm, whether it is capable of discharging any shot, bullet or other missile or

not. It further appears that the above provisions of the Act does not include phrase “arms” as defined in Section 2(c) but the “firearms” as outlined under Section 2(d) of the Act.

6. The applicant is confined in judicial custody since day of his arrest i.e. 11.01.2023 and the prosecution has already submitted the challan against him; hence, his custody is no more required for investigation purpose. Under Section 24 and 25 of the Act, the punishment for possessing an imitation firearm may extend to 10 years. However, in the instant case, it is yet to be determined after full-fledged trial if the alleged act of the applicant falls within the ambit of the aforementioned penal provisions of the Act. No reason exists for keeping the applicant behind the bars, when sufficient anomalies have appeared in the case of the prosecution, which have created doubt in the prosecution’s case; 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.25,000/- (Rupees Twenty Five 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

Athar Zai