

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Bail Appl. No. S -1025 & 1045 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For orders on office objection
For hearing of main case

16.10.2023

M/s. Muhammad Iqbal Qasar and Wahid Bux Aajiz Laghari advocates for applicants.

Mr. Siraj Ahmed Bijarani Assistant PG.

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ORDER

ADNAN-UL-KARIM MEMON, J: Through these bail applications applicants Moosa Khan and Arshad Ali seek post arrest bail in Crime No.120 of 2023 of PS Kario Ganhwar under Section 8 of Sindh Prohibition of Preparation Manufacturing Storage Sale and Use of Gutka and Mainpuri Act 2019.

2. Brief facts of the case are that complainant ASI Anwar Ali Gaho posted at PP Tarai while patrolling was checking vehicles on Dadharko Farm on Kario Ganhwar-Golarchi Road. Meanwhile one 10 wheeler truck No.C-3096 was coming from Golarchi side, they stopped it for checking when both two persons jumped from the truck and ran towards eastern side in the jungle whom they identified as Allah Jurio and Sher Muhammad @ Shero Langah, while both the applicants being drivers of the truck got down and were arrested being suspicious. The truck was seized and while checking recovered huge quantity of mainpuries, betal nuts and intoxicated katho used for preparation of ghutkas. From recovered mainpuries, 05 mainpuries were taken out and sealed for chemical analysis while remaining were sealed. Such mashirnama of arrest and recovery was prepared in presence of mashirs and thereafter present FIR was lodged.

3. Learned counsel submit that the punishment provided under Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Ghutka, Mainpuri Act, 2020 (herein after referred as Act, 2020) is three years hence,

does not exceed limits of prohibitory clause of Section 497(i) Cr.P.C.; that the applicant is first offender, therefore, deserves leniency; that in such like cases grant of bail is a rule while refusal is an exception. He therefore, prays for grant of bail to the applicants.

4. Conversely, learned Assistant P.G appearing for the State, does oppose the bail applications.

5. Heard learned counsel for applicant, learned A.P.G for the State and perused record as well as the Act, 2020.

6. It appears that the applicants have been shown to have been in possession of items used for preparation of Mawa / Ghutka, which they allegedly were transporting and subsequently they were apprehended by the police. The allegation leveled by prosecution in the F.I.R 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. Prima facie, the punishment under Section 8 (1) as provided by the 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.

7. In view of the above I am of the tentative view that applicants have successfully made out a case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, the instant Criminal Bail Applications are allowed. Consequently, Applicants are admitted to bail subject to their furnishing solvent surety in the sum of Rs. 2,00,000/- (Rupees two lac) each and PR bond in the like amount to the satisfaction of trial Court.

8. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE