

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.2573 of 2023

Date	Order with signature of Judge
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For hearing of bail application

**21.12.2023**

Mr. Shafqat Gul Malik advocate for the applicant / accused  
Mr. Abrar Ali Khichi, Additional PG

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Through this criminal bail application, applicant Rana Yaseen seeks post-arrest bail in Crime No.17/2022 registered under Section 23(I) (a) of the Sindh Arms Act, 2013 at PS Khokhrapar Karachi, after his bail plea has been declined by learned IV-Additional Sessions Judge East Karachi vide order dated 03.11.2023 on the premise that the accused remained absent for 15 months and no intimation had been furnished by surety or counsel regarding his absence. The certificate of rehabilitation is for three months only as per letter dated 15.10.2023 thus he misused the concession of bail and there is likelihood that if bail is granted, he will again jump the bail.

2. Brief facts of the prosecution case are that the accused was arrested in Crime No.17/2022 under Sections 23(1) (a) of the Sindh Arms Act, 2013 by Khokhrapar Police Station Karachi, having been found in possession of one 32 bore pistol loaded with three live rounds of bullets, for which the applicant/accused could not produce any valid license, subsequent thereto, the FIR of the incident was registered by the complainant.

3. Learned counsel for the applicant has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case by the police; and that he has not misused the concession of bail as he being patient remained in the drug rehabilitation center of Narcotics for his treatment for four months. He next contended that charge has been framed and case would conclude within short span of time, therefore, keeping the applicant behind the bar being patient will not serve the purpose rather his condition will deteriorate inside the prison, he prayed for allowing the instant bail application.

4. Learned Additional PG has strongly opposed the grant of bail to the applicant/accused on the ground that the applicant/accused is nominated in the FIR, he has been arrested red-handed at the spot and recovery of crime weapon has also been affected from him. He contended that the allegation made by the applicant against the police officials of foisting a false case is baseless as no enmity with the police officials or malafides on their part has been alleged by the applicant. Regarding the absence of independent witnesses, he contended that bail cannot be granted on this ground. It was urged that the offense committed by the applicant falls within the

prohibitory clause of Section 497 Cr.P.C. as Section 23(1) (a) of the Act 2013 provides a maximum punishment of 14 years and a fine. Besides he has misused the concession of bail granted by the trial court at the initial stage, which factum disentitle him for bail.

5. I have heard the learned counsel for the applicant / accused and the learned Additional Prosecutor General Sindh for the State, and have also gone through the record.

6. In a case namely, Ayaz Ali v. The State, (PLD 2014 Sindh 282), after examining and comparing Sections 23(1) (a) and 24 of the Act, it was held by a learned single Judge of this Court that Sub-Section (1) (a) of Section 23 of the Act deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act (i.e. 'license for acquisition and possession of firearms and ammunition); and whereas, Section 24 of the Act provides punishment for possessing arms or ammunition, licensed or unlicensed, to use the same for any unlawful purpose. It was further held that since maximum punishment of up to 14 years is provided in Section 23(1)(a) and Section 24 provides a punishment of up to 10 years, the maximum punishment in the case of recovery of a pistol, which falls within the definition of "arms" in terms of Section 2 of the Act, will be 10 years under Section 24 of the Act. It was also held that the question of the quantum of punishment has to be determined by the trial Court as to whether the accused would be liable to maximum punishment or not, and in case of his conviction, whether his case would fall under the prohibitory clause or not. It was observed in the cited case that all the witnesses were admittedly police officials, and the accused was no more required for further investigation. Because of the above observations and findings, it was held *inter alia* that the case was that of further inquiry, and accordingly, bail was granted.

7. In a more recent case; namely, Criminal Bail Application No.1010/2014 (Muhammad Shafique versus The State) decided on 11.07.2014, it has been observed that the terms "arms" and "firearms" have been separately and distinctly defined in Clauses (c) and (d), respectively, of Section 2 of the Act; amongst many other articles designed as weapons of offense or defense, "pistols" are included in the definition of "arms" in Clause (c) *ibid* and not in the definition of "firearms" defined in Clause (d) *ibid* ; the punishment and penalty for acquiring, possessing, carrying, or controlling any "firearm" or ammunition in infringement of Section 3 of the Act, is provided in Section 23(1) (a) of the Act, which is imprisonment for a term that may extend to 14 years and with fine; and, whereas, the punishment for possessing "arms" or ammunition, licensed or unlicensed, with the aim to use them for any unlawful purpose etc., is provided in Section 24 of the Act, which is imprisonment for a term which may extend

to 10 years and with a fine. This Court held in the aforementioned case that the above clearly shows the intention of the legislature that not only are the offenses to “arms” and those relating to “firearms” to be dealt with separately as provided in the Act; but since punishments having different terms in respect of “arms” and “firearms” have been specified separately in the Act, punishment under Section 23(1) (a) of the Act cannot be awarded for an offense committed under Section 24 of the Act, and vice versa.

8. As observed above, amongst many other articles designed as weapons of offense or defense, “pistols” are included in the definition of “arms” in Clause (c) *ibid* and not in the definition of “firearms” defined in Clause (d) *ibid*.

9. Adverting to the facts of the present case, the prosecution has alleged that one 32-bore pistol was recovered from the applicant, but he was booked and has been challaned under Section 23(1)(a) of the Act, which applies to “firearm or ammunition” and not to “arms”. It will be for the trial Court to decide whether the provisions of Section 23(1)(a) *ibid* will apply to the applicant’s case or not.

10. It is an admitted position that all the witnesses are police officers and no attempt was made by them to search for independent witness(s) although the applicant has in his possession one 32-bore pistol having three live rounds, for which the applicant/accused could not produce any valid license, subsequent thereto, the FIR of the incident was registered by the complainant. Even the F.I.R. does not suggest that the police officials first tried to search for independent witness(s), but when no such witness was found, only then they searched the applicant and prepared the memo of arrest and alleged recovery from him. This factum requires further probe into the matter for the reason that the applicant had already been admitted to bail by the trial Court, however after his arrest pursuant the warrants of arrest by the trial court, he was arrested and sent to prison on the ground that he misused the concession of bail. Whereas the applicant has produced the certificate that he remained under treatment in the rehabilitation center this factum has discussed by the trial court in the bail decline order but the applicant failed to convince the trial Court, all these factums needs examination of the things, for which the trail court will see.

11. Since the investigation has been completed and the challan has been submitted before the trial Court, and charge has been framed, the trial Court has to decide whether the case of the applicant falls within the ambit of Section 23(1) (a) of the Act or not. So far as the misuse of the concession of bail is concerned, the trial Court shall definitely recall the bail order if the applicant / accused again misuses the concession of bail granted by this Court, without referring the matter to this Court. In such circumstances, the Trial Court is directed to conclude the trial within one

month positively. MIT-II is directed to seek compliance of this order within time.

12. During the arguments learned counsel for the applicant has filed statement along with order dated 12.12.2023 passed by the learned VII-Judicial Magistrate Karachi East in Bail Application No.378/2023 arising out of FIR No.1632/2021 under Section 397/34 PPC of PS KIA, whereby the applicant was granted bail in which the alleged snatched motorcycle bearing Registration No.ACC-9892, maker Honda 125, model 2020. If this is the position of the case, the case of the applicant falls within the ambit of law laid down by the Supreme Court in the case of Tariq Bashir v. The State (PLD 1995 SC 34).

13. For the foregoing reasons this bail application is allowed and the applicant is admitted to post-arrest bail in the aforesaid crime subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

14. It is hereby clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case on merits strictly under the law.

JUDGE

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