

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Bail Application No. 1413 of 2023

Date	Order with signature of Judge
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1. For orders on office objection at A
2. For hearing of bail application

Date of hearing: 01.08.2023

Date of order: 10.08.2023

Mr. Jawaid Panhwar advocate for the applicant

Mr. Zahoor Shah APG along with SIP Ali Gohar Bhatti on behalf of DIGP Larkana and SIP Gulzar Hussain

SalahuddinPanhwar, J. - It is alleged that applicant was arrested with an unlicensed pistol of 30 bore rubbed number with 03 live bullets, for which the present case was registered. The applicant filed Bail Application before the learned trial Court, but the same was dismissed, hence applicant has preferred instant bail application.

2. Heard and perused the record.

3. In a case authored by me, which is reported as *Ayaz Ali vs. The State, (PLD 2014 Sindh 282)*, wherein after examining and comparing Sections 23(1)(a) and 24 of the Act, it was held 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, with the aim to use the same for any unlawful purpose and whether such unlawful purpose has been materialized or not. It was further held that since maximum punishment up to 14 years is provided in Section 23(1)(a) and Section 24 provides punishment up to 10 years, 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. The question of quantum of punishment is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of

case. The Apex Court in case of **Jamal-ud-Din alias Zubair Khan v. The State (2012 SCMR 573)** while granting bail to the petitioner has held that:-

"4. Without entering into the merits of the case, as the quantum of sentence has to be commensurate with the quantum of substance recovered, we doubt the petitioner can be awarded maximum sentence provided by the Statute. Needless to say that the Court while hearing, a petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. The fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail.

3. In the present case, admittedly all the witnesses are police officers and though according to prosecution case the alleged recovery was effected near Al-Shahbaz PSO Patrol pump, but no efforts were made by the complainant to associate any person from the said patrol pump. Since investigation has been completed and challan has been submitted before the trial Court, the applicant will not be required for any further investigation. In such circumstances, there is no possibility of tampering in the case of the prosecution by the applicant. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense at the time of the trial and the trial Court shall have to decide whether the case of the applicant falls within the ambit of Section 23(1)(a) of the Act or not. The applicant has also been granted bail by this Court in main case. In view of the above discussion, this is a case which requires further inquiry, accordingly, applicant has made out a case for the grant of bail.

4. For the foregoing reasons, the applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) and P.R bond in the like amount to the satisfaction of the trial Court.

5. These are the reasons for the short order announced on 01.08.2023.

J U D G E