

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

Criminal Bail Application No.S-602 of 2023

Applicant: Abdul Waheed Son of Abdul Majeed through Mr. Hussain Bux Chachar advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh along with I.O/SIP Khadim Hussain CIA, Umerkot.

Date of hearing: **28.08.2023**

Date of Order: **28.08.2023**

O R D E R

ZULFIQAR ALI SANGI, J:- Through this application, applicant named above seeks post arrest bail in FIR being Crime No.36 of 2023 registered at PS Samaro for offence under sections 4,5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manipuri Act 2019. Earlier his application seeking same relief was dismissed by learned Additional Sessions Judge-I, Umerkot vide order dated 20.05.2023.

2. Brief facts of the aforementioned F.I.R. registered against the applicant by the A.S.I of P.S. Samaro that on 30.04.2023 a police party during patrol intercepted a Mazda vehicle at Shabir Water, Samaro-Kunri Road, Taluka Samaro which was loaded with 4 big sacks filled with betel nuts, one white sack of lime, five packets of Zafrani Patti and a small sack containing 5 kg katha (catechu). The said Mazda was driven by applicant, who was arrested accordingly and he disclosed that said material belongs to accused Jameel s/o Wali Muhammad Marwari, hence this F.I.R was registered.

3. Learned counsel for the applicant has contended that though the alleged place of incident is thickly populated area but no private person was associated by the complainant to witness the alleged recovery proceedings; that the applicant is nothing to do with the alleged recovery and same has been foisted upon him; that the applicant is in custody since last more than four months without effective progress in his trial. Lastly, he submits that the offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, prays that applicant may be enlarged on post arrest bail.

4. Learned Assistant Prosecutor General, Sindh for the State has strongly opposed the grant of bail to the applicant by contending that allegedly applicant through his vehicle was transporting the above said contraband substance which is injurious to human lives and the offence with which he has been charged is effecting the society at large, therefore, he is not entitled for grant of bail and his bail application may be dismissed.

5. I have heard learned counsel for applicant as well as the learned Assistant Prosecutor General Sindh and have gone through the material available on the record with their able assistance.

6. Perusal of section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manipuri Act 2019 reflects that its punishment is upto three (03) years but

shall not less than 01 year and fine of rupees two lacs. It is settled by now that while deciding the question of bail lesser sentence is to be considered. In ***Shehzore and another's case 2006 YLR 3167*** while considering the lesser sentence of the offence this Court granted bail to the accused. As has been discussed above in respect of the punishment provided for the alleged offence for which the applicants are charged, the same provided maximum punishment up to three (03) years which even does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in these cases is right while refusal is an exception as has been held by Honourable Supreme Court of Pakistan in cases of ***Tarique Bashir V. State (PLD 1995 SC 34)***, ***Zafar Iqbal V. Muhammad Anwar and others (2009 SCMR 1488)***, ***Muhammad Tanveer V. State (PLD 2017 SC 733)*** and ***Shaikh Abdul Rehman V. The State etc. (2021 SCMR 822)***.

7. The Honourable Supreme Court in case of ***Muhammad Imran V. The State and others (PLD 2021 SC 903)*** has formulated the grounds for the case to fall within the exception meriting denial of bail as (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view of his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further Honourable Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicant. It is also settled by the Honourable Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record.

8. From the tentative assessment of the record, I am of the view that the applicant has made out his case for grant of bail. Resultantly, this application is allowed and the applicant is granted bail subject to furnishing his solvent surety in the sum of Rs.100,000/- (Rupees one hundred thousand) and P.R bond in the like amount to the satisfaction of Trial Court.

9. The bail application stands disposed of in the above terms.

^JUDGE