

ORDER SHEET  
**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-609 of 2023

Criminal Bail Application No.S-624 of 2023

Applicant: Muhammad Adil, Usama Tarique and Safeer Khan through M/s. Naeemuddin Sahito, Shoaib Ali Narejo, and Sanauallah Bhungar, Advocates.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: **07.08.2023**

Date of Order: **07.08.2023**

**O R D E R**

**ZULFIQAR ALI SANGI, J:-** Applicants namely, Muhammad Adil, Usama Tarique and Safeer Khan are involved in the one and same offence, as such, both captioned bail applications are being disposed of by this single order. They seek post-arrest bail in crime No.41 of 2023 registered at PS Loonikot for the offence under section 8 Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manipuri Act 2019. Earlier their application seeking bail was declined by the learned Additional Sessions Judge-II, Kotri vide orders dated 06.06.2023 & 08.06.2023 respectively.

2. Brief facts of the case are that the aforementioned F.I.R. was registered against the applicants by the SIP Muhammad Sulleman Lashari of P.S. Loonikot on 01.06.2023. The story as narrated in the F.I.R. is that a police party was on patrol duty when reached at Iron Bridge Loonikot, where they received spy information that a Hi-ace Van in white color bearing Registration No.JF-5282 is coming from Karachi to Hyderabad having sacks of powder of intoxication mainpuries in rear set of said vehicle. On such information, they reached near FWO camp in front of zamzam hotel situated at M-9 road leads from Karachi to Hyderabad and started checking. It was 1730 hours when said

vehicle and one white color Yaris Corolla Car behind it came, which on their signal were stopped They got alighted the drivers of the vehicles as well as persons sitting in the vehicles and recovered 30 bags (300 kilograms of raw-material for using it in mainpuries from Hi-ace vehicle. On inquiry, the driver of Van disclosed his name Safeeruddin and the other persons disclosed their names Mirza Fareed Hussain, Muhammad Adil, and driver of Yaris Car disclosed his name as Usama Tarique. They further disclosed that they took such intoxication material from dealer Mohsin Punjabi and accused Muhammad Adil and Usama Tarique who are police constables in police department use to get crossed the material. Sample for chemical analyzes was also taken. Hence this F.I.R was registered.

**3.** Learned counsel for the applicants have contended that though the alleged place of incident is busy road but no private person was associated by the complainant to witness the alleged recovery proceedings; that the applicants are nothing to do with the alleged recovery and same has been foisted upon them; that the applicants are in custody since last two months without effective progress in their trial. Lastly, they submits that the offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, prays that applicants 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 applicants by contending that allegedly applicants through vehicle were transporting huge quantity of contraband substance which is injurious to human lives and accused who are police constables were helping to safely transport such contraband and the offence with which they have been charged is effecting the society at large, therefore, they are not entitled for grant of bail and their bail applications may be dismissed.

**5.** I have heard the learned counsel for the applicants as well as the learned Assistant Prosecutor General, Sindh and have also 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 ***Shahmoror'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 applicant is 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)***, ***ZafarIqbal V. Muhammad Anwar (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 applicants. 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. As regards to the facilitation made by the police officials to the main accused, it is observed

that they would face the departmental proceedings in such respect separately and before this Court only their bail plea is to be decided tentatively.

**8.** From the tentative assessment of the record the applicants have made out their case for grant of bail. Resultantly, this application is allowed and the applicants are granted bail subject to furnishing their solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) each and P.R bond in the like amount to the satisfaction of the Trial Court.

**9.** The bail applications are disposed of in the above terms.

JUDGE

\*Abdullah Channa/PS\*