

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.2017 of 2023

Date	Order with signature of Judge
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For hearing of bail application

20.9.2023

Mr. Mukesh Kumar Khatri advocate for the applicant alongwith applicant Mr. Muntazir Mehdi, Additional PG alongwith IO/SI Muhammad Panjal at present posted at Sharafi Goth Karachi

Through this bail application under Section 498 Cr.P.C., the applicant Abdul Majeed has sought admission to pre-arrest bail in F.I.R No. 933/2022, registered under Section 23 (i) A of Sindh Arms Act, 2013, lodged at Police Station Shah Latif, Karachi. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge VI (Malir) Karachi vide order dated 21.08.2023 in Criminal Bail Application Nos. 3445/2023. On the premise that at the time of arrest of the applicant in the aforesaid crime, the police recovered one TT pistol 30 bores with a loaded magazine 03 rounds alive and failed to produce any license and after granting post-arrest bail he did not appear before the trial Court and the trial Court after conducting codal formalities issued notice to the surety and NBW which warrant is still intact and there is no harassment of the police except arrest the accused.

2. learned counsel for the applicant has submitted that due to misconception and miscommunication, the applicant presumed to have been acquitted from the charge and he went away however upon inquiry he came to know that he has not been acquitted from the subject FIR but rather non-bailable warrants had been issued against him by the trial Court compelling him to surrender before the trial Court, however, the learned trial Court was not kind enough to believe the story of the applicant and rejected his bail plea on the aforesaid grounds. Learned counsel further submitted that the applicant is ready and willing to appear before the trial Court to face the trial. He prayed for suspension of the non-bailable warrants issued against him enabling him to face the trial.

3. Learned Addl. P.G. has opposed the bail plea of the applicant on the premise that the applicant is fugitive from the law and there is no mala fide and malice on the part of the prosecution. He supported the impugned order dated 21.08.2023 passed by the learned trial Court with the further assertion that the applicant is involved in other criminal cases, thus not entitled to bail at this stage. He prayed for the dismissal of the bail application.

4. In a recent case; namely, Ayaz Ali V/S 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 a 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.

5. In a more recent case ; namely, Criminal Bail Application No.1010/2014 (Muhammad Shafique V/S The State) decided on 11.07.2014, wherein 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 offence or defence, “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 which 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.

6. 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*.

7. Adverting to the facts of the present case, the prosecution has alleged that one 30-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.

8. Since the investigation has been completed the challan has been submitted before the trial Court, and the applicant was granted post-arrest bail by the trial Court on merits, however, due to misconception he failed to join the trial compelling the trial Court to recall the bail order and issued non-bailable warrants against him. Upon coming into knowledge applicant surrendered before the trial Court however his pre-arrest bail was declined on the premise that he was declared absconder in the aforesaid crime.

9. 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.

10. For the foregoing reasons this bail application is converted into protective bail by suspending the non-bailable warrants of arrest of the applicant issued by the trial Court in the aforesaid crime and the applicant is allowed to appear before the trial Court to face the trial. The surety earlier submitted by the applicant vide order dated 11.09.2023 shall remain intact till the final disposal of the subject criminal case, pending before the trial Court, arising out of FIR No. 933/2022, registered under Section 23 (i) A of Sindh Arms Act, 2013, lodged at Police Station Shah Latif, Karachi.

11. The trial Court shall proceed with the matter and decide the case on merits strictly under the law within one month.

JUDGE

