

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-957 of 2023

[Shahab versus The State]

Applicant : **Through Mr. Haq Nawaz Jamari advocate**
State : **Through Ms. Sana Memon Assistant P.G**
Date of hearing : **06.10.2023**
Date of Order : **06.10.2023**

ORDER

MAHMOOD A. KHAN J:- Applicant seeks interim pre-arrest bail in Crime No.116 of 2023 registered at P.S Husri/Seri Hyderabad under 08 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale & Use of Gutka and Mainpuri Act 2019, after rejection of his plea for the same relief by the learned trial Court vide Order dated 12.07.2023.

2. Since the facts of prosecution case are sufficiently mentioned in the F.I.R as well as impugned order passed by the learned trial Court, therefore, there is no need to reproduce the same for the sake of brevity.

3. Learned counsel for applicant submits that punishment, provided by law/ Sindh Prohibition of Preparation, Manufacturing, Storage, Sale & Use of Gutka and Mainpuri Act 2019, is three years hence, does not exceed the limits of prohibitory clause of Section 497(i) C.P.C. Learned counsel further submits that applicant has falsely been implicated in this crime by the police with malafide intentions and ulterior motives. He next submits that in such like cases grant of bail is a rule while refusal will be an exception. He, therefore, prays that applicant may be granted bail.

4. Conversely, learned A.P.G halfheartedly opposes the bail application.

5. Heard learned counsel for applicant as well as learned A.P.G and have also perused the material available on record including Act ibid.

6. It appears that applicant has been shown to have in possession of raw mainpuri powder. The allegation leveled by prosecution in the F.I.R falls within the definition of Sections 3, 4, 5, 6 and 7 of the Act ibid, which are punishable u/s 8 of the Act. For sake and convenience, it will be appropriate to reproduce the section 8 of said Act blow:-

8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine

which shall not be less than two lacs (two hundred thousand) rupees.

(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees.

7. Since the applicant is first offender and is not previously convicted, therefore, his case, coming within the ambit of Section 8(i) of the Act *ibid*, does not fall under second proviso to Section 8 of the Act.

8. Prima facie, the punishment under Section 8 (i) as provided by the Act *ibid* is three (03) years which does not exceed the limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of Tarique Bashir & 5 others vs. The State (PLD 1995 SC page 34) and Muhammad Tanvir and another vs. The State (PLD 2017 SC page 733).

9. In view of the above legal position, I am of the view that applicant has successfully made out his good prima facie case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is allowed. Consequently, the interim pre-arrest bail, granted to the applicant vide Order dated 31.08.2023, is hereby confirmed on the same terms and conditions.

10. It needs not to reiterate that the observation(s) made hereinabove is/are tentative in nature and the same shall not prejudice the case of either party during trial.

Captioned bail application stands disposed of accordingly.

JUDGE

Sajjad Ali Jessar