

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No. S-1048 of 2023

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE(S)</u>
<u>13.10.2023</u>	

Mr. Saddam Hussain Keerio, Advocate for applicant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

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MAHMOOD A. KHAN, J- Through this application, Applicant seeks post-arrest bail in Crime No.92 of 2023, registered at Police Station Tando Ghulam Ali u/s 08 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (Sindh Act No.III, 2020). Earlier, the bail plea raised by applicant before first forum has been declined by Court of Additional Sessions Judge, Matli in terms of impugned order dated 13.09.2023.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order, therefore, there is no need to reproduce the same.

3. Learned counsel for applicant submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 is three years hence, does not exceed limits of prohibitory clause of Section 497(i) C.P.C. He next submits that in such like cases grant of bail is a rule while refusal will be an exception. He prayed that co-accused has already been granted bail by this Court vide Order dated 18.09.2023 in Cr. Bail Application No.S-942 of 2023. He therefore, prays that applicant may also be admitted to bail

4. Conversely, learned A.P.G appearing on behalf of State halfheartedly opposes the bail application.

5. Heard learned counsel for applicant, learned A.P.G for the State and have also perused record including Act ibid.

6. It appears that applicant has been shown to have possession of raw mainpuri powder, which he allegedly was transporting and subsequently was intercepted and apprehended by police. 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 said Act. For sake and convenience, it will be appropriate to reproduce the section 8 of said Act which reads as under:-

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. Prima facie, the punishment u/s 8 (i) as provided by law / Act *ibid*, is three (03) years which does not exceed 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 v. The State* (PLD 1995 SC page 34) and *Muhammad Tanvir and another v. The State* (PLD 2017 SC page 733). Further the co-accused has already been granted bail by this Court vide Order dated 18.09.2023 passed in Cr. Bail Application No.S-947 of 2023.

8. In view of the above legal position, I am of the view that applicant has successfully make 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 hereby allowed. Consequently, the applicant is admitted to bail, subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and a P.R Bond in the like amount to the satisfaction of learned trial Court.

9. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial and the trial Court shall be competent to take necessary legal action against the applicant without making reference to this Court, in case he misuses the concession of bail.

JUDGE

Sajjad Ali Jessar