

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

Criminal Bail Application No.S- 531 of 2024

24.06.2024.

Mr. Qadir Bux Ghirano, Advocate for applicant alongwith applicant (on bail).

Ms. Rameshan Oad, A.P.G for State.

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Criminal Bail Application, applicant Thakar alias Soomar s/o Depo Kolhi seeks pre-arrest bail in Crime No.08/2024 registered at Police Station Kario Ghanwar for an offence under Section 8 S.P.P.M.S.S & Use of Ghutka and Manpuri Act, 2021. His earlier application for the same relief bearing Cr.B.A.No.112 of 2024 was heard and dismissed by the learned 2nd Additional Sessions Judge, Badin vide order dated 06.02.2024. The applicant was admitted to interim pre-arrest bail by this Court vide order dated 21.05.2024, now the matter is fixed for confirmation of interim bail or otherwise.

2. As per FIR, on 18.01.2024 at about 1800 hours, ASI Ghulam Shabir Chandio of PS Kario Ghangwar while on patrolling duty alongwith his subordinate staff, signaled the driver of Suzuki bearing Registration No. KLO-5215 to stop, on that driver escaped away while the other passenger sitting in the Suzuki namely Atif son of Ahmed Chandio was apprehended, who disclosed the name of driver as Thakar alias Soomar (present applicant). From the search of Suzuki, two white bags of Radi Kagaz, 08 Katas of betel nuts used in Gutaka, each Kata had 13/13 KGs betel nuts, total weight 104 KGs; one white Kata having 500 Handmade Gutka were recovered. Hence, the accused were booked in the aforementioned FIR.

3. Heard the learned counsel for applicant, learned A.P.G for State and perused the material available on record.

4. It is an admitted position that the applicant was not arrested from the spot and his name was disclosed by arrested co-accused. Except such statement of co-accused, there is no evidence collected so far by the I.O, which makes the case of applicant that of further inquiry under sub-section (2) of Section 497 Cr.P.C, for the purpose of bail. The Honourable Supreme Court in the case *The State through Deputy Director Anti Narcotics Force, Karachi v. Syed Abdul Qayoom (2001 SCMR 14)* while dilating upon the evidentiary value of statement of co-accused made before the police in the light of mandates of Article 38 of Qanoon-e-Shahadat Order, 1984, held that *the statements of co-accused recorded by police during investigations are inadmissible in law and cannot be relied upon*. Similar view has been reiterated by the Apex Court in the case of *Raja Muhammad Younas v. The State (2013 SCMR 699)* by holding that *“only material implicating the petitioner is statement of co-accused Amjad Mehmood, Constable, under Article 38 of Qanoon-e-Shahadat Order, 1984, admission of an accused before the police cannot be used as evidence against the co-accused*.

5. It is also an admitted position that after completing the investigation, police has submitted challan and the present applicant is no more required for further investigation. The alleged offence is punishable for imprisonment of 03 years, hence, the same does not fall within the prohibitory clause of Section 497 Cr.P.C. The general rule in such like cases is that bail should be granted unless some exceptional circumstances exist to justify denying the grant of bail. In this case no such exceptional circumstance exists. Accordingly, instant bail application is allowed. The interim pre-arrest bail already granted to the applicant vide order dated 21.05.2024 is hereby confirmed on same terms and conditions.

Criminal Bail Application stands disposed of.

JUDGE