

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

Cr.Bail.Appl.No.S- 984 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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04.11.2013.

Mr. Nadeem Hyder Tareen, Advocate for applicant.
Syed Meeral Shah, D.P.G. for the State.

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NAIMATULLAH PHULPOTO, J:- Through instant application, applicant / accused Muhammad Ali s/o Riaz Muhammad Shaikh seeks bail in Crime No.179/2013 registered against him at Police Station Market Hyderabad U/s 23 (1) (a) The Sindh Arms Act, 2013.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 08.10.2013 ASI Rajab Ali Bhat left Police Station alongwith his subordinate staff for patrolling duty. At about 1250 hours when the police party reached at Prince Ali road near Miran Girls School, Police found the present accused standing in suspicious manner. He tried to slip away while seeing the police party but police surrounded and caught him hold. Private mashirs were not available therefore, ASI made PCs Abdul Samad and Aftab Alam as mashirs and conducted personal search of accused. From the fold of his Shalwar one 30-bore pistol without number containing 11 live bullets in its magazine and cash of Rs.350/- were recovered; such mashirnama was prepared. Thereafter, accused and the case property were brought at police station Market where such FIR was registered.

3. After usual investigation challan was submitted against the applicant / accused U/s 23 (1) (a) The Sindh Arms Act, 2013.

4. Bail application was moved on behalf of the applicant/accused, same was dismissed by Vth Additional Sessions Judge, Hyderabad vide order dated 14.10.2013.

5. Mr. Nadeem Hyder Tareen, learned counsel for the applicant/accused mainly contended that applicant/accused is no more required for investigation; 30-Bore pistol, allegedly recovered from the applicant/accused has not been sent to the Ballistic Expert for report and the punishment of the alleged offence may extend to 10 years. According to learned counsel, alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. In support of his contention, learned counsel for the applicant/accused relied upon the bail order dated 22.10.2013, passed by this Court in Criminal Bail Application No.S-844 of 2013 (Mour v. the State).

6. Syed Meeral Shah, learned D.P.G, appearing on behalf of the State argued that The Sindh Arms Act, 2013 has been enacted to curb the proliferation of arms and ammunition and the offence falls within the prohibitory clause of section 497 Cr.P.C. He has opposed the application.

7. I am inclined to grant bail to the applicant/accused for the reasons that all the prosecution witnesses are police officials; case has been challaned; applicant/accused is no more required for investigation; there is no apprehension of tampering with the prosecution evidence; pistol recovered from the possession of the applicant/accused has not been sent to the Ballistic Expert for report. In Section 24 of The Sindh Arms Act, 2013, it is provided that punishment of unlicensed arm may extend to ten years and with fine. The Court while hearing bail application is not to keep in view the maximum sentence provided by statute but the one which is likely to be entailed in the facts and circumstances of the case. In the instant case, 30-bore unlicensed pistol has been recovered from possession of accused. It has been argued that police had enmity with accused to foist pistol upon him. Therefore, keeping in view facts and circumstances of the case, while relying upon above cited order, prima facie, case against applicant/accused requires further

enquiry as contemplated under subsection (2) of Section 497 Cr.P.C. Applicant/accused is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousand) and P.R. bond in the like amount to the satisfaction of trial Court.

8. Needless, to mention here that the observations made hereinabove are tentative in nature and would not influence trial Court while deciding the case on merits.

JUDGE

Tufail

