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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 271 of 2013.

Date of hearing	Order with signature of Judge
31.07.2013.	

Mr. Saleem Raza Jakhar, Advocate for applicant.
Mr. Muhammad Bux Qazi, State Counsel.

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Through instant applicant, applicant Rafique Khokhar seeks post arrest bail in Crime No.34/2013, of P.S Dokri, offence under Section 23 (i) (a) of Sindh Arms Act, 2013.

2. Precisely, relevant facts are that applicant was confined at lock-up in Crime No.33/2013, offence under Section 380 P.P.C; during interrogation, applicant voluntarily agreed to produce crime weapon used in commission of offence, thereby recovery of unlicensed pistol having 30-bore alongwith magazine was effected.

3. Learned counsel for the applicant, *inter-alia*, contends that police has misapplied Section 23 (i) (a) of Sindh Arms Act, 2013, and instant matter is governed by Section 24 of the said Act, which is punishable upto ten years, hence does not fall within prohibitory clause of Section 497 Cr.P.C. He has relied upon un-reported judgment of this Court, vide order dated 24.7.2013, in Crl. Bail Appln. No. S- 247/2013 (Sabit Ali v. The State). He has further contended that applicant has been granted post arrest bail in main case, which is Crime No.33/2013 by the trial Court.

4. Conversely, counsel appearing for the State argued that by new enactment instant matter falls within prohibitory clause of Section 497 Cr.P.C, therefore, applicant is not entitled for bail.

5. Heard learned counsel and perused the record.

6. Since, regarding applicability of Section, in instant matter, this question was raised in case of Sabit Ali (supra), wherein same was answered by me in paragraph 10, that Section 24 of Sindh Arms Act, 2013



will be applicable, hence offence does not fall within prohibitory clause of Section 497 Cr.P.C. It will be conducive to refer the said para:

*"The joint reading of Section 23 (1)(a) and Section 24 of the Act would show that the subsection (1)(a) of Section 23 of the Act deals with situation where one acquires, possesses, carries or control any firearm or ammunition in contravention of Section 3 (i.e. licence for acquisition and possession of firearms and ammunition) while the Section 24 of the Act punishment for possessing arms or ammunition licensed or unlicensed with the aim to use them for any unlawful purpose. It is germane to append here that plain reading of Section 23 and 24, elucidate that Section 23 (1) (a) provides maximum punishment upto 14 years, whereas remaining provides ten years, thus, apparently instant case, wherein recovery is pistol, which falls within the definition of arms as provided in the Section 2, which carries maximum sentence ten years as provided in Section 24 of the Sindh Arms Act, 2013."*

7. Besides, applicant has been granted post arrest bail in main case by the trial Court and instant case is off-shoot of that case. Moreover, applicant is behind the bar; case is pending for adjudication of guilt; all witnesses are police official, therefore, there is no likelihood of tampering in prosecution case. Reference, if any, can be made to the case of *Tariq Bashir v. The State (PLD 1995 S.C 34)*.

8. Keeping in view, given circumstances, alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C, thus applicant is admitted to post arrest bail in the sum of Rs.100,000/- (One hundred thousand) and P.R bond in the like amount to the satisfaction of trial Court.

  
Judge

Ansari/\*