

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 707 of 2020

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DATE

ORDER WITH SIGNATURE OF JUDGE(S)

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1. For order on urgent application (M.A- 4906 of 2020).
2. For orders on office objection.
3. For hearing of main case.

10.08.2020

Mr. Saifullah Dasti, Advocate for the Applicant.

Mr. Shahid Ahmed Shaikh, D.P.G. Sindh.

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ABDUL MAALIK GADDI, J.- Having remained unsuccessful in obtaining post-arrest bail from the learned trial Court i.e. Additional Sessions Judge-I, Tando Adam, in Crime No.17 of 2020, registered at Police Station Berani, under section 4-8(i) Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Using Gutka and Mainpuri Act, 2019, the Applicant has approached this Court for same relief in aforementioned crime.

2. The allegation against the Applicant / accused is that on 16.07.2020, he was found selling Safina Gutka at his shop situated at Berani Shakh, Taluka Jam Nawaz Ali and accordingly apprehended by the police party headed by SIP Akbar Khan Mari at 1500 hours and 10500 sachets of Safina Gutka were recovered from his possession in presence of mashirs.

3. Learned counsel for the Applicant argued the case in line of the grounds mentioned in bail application and further contended that present incident is result of enmity with the police.

4. Learned D.P.G while opposing the bail application, contended that huge quantity of Safina Gutka has been recovered from the possession of Applicant, hence he is not entitled for any concession.

5. Parties advocates heard and record perused.

6. It is noted that challan of the case has been submitted and during course of the arguments I have specifically asked a question from the learned DPG that whether chemical examiner's report in respect of the recovered item / safina gutka is available in the police record, he replied in negative. Accordingly, a question arises that when chemical examiner's report with

regard to hazardousness or poisonousness of the said recovered item is not available / received, how learned trial Court has accepted challan of the case.

7. It is also noted that alleged offence took place in broad day light i.e. 1500 hours and the shop of the Applicant is said to be situated at populated area; however, no independent / private person from the locality has been cited as witness to attest the alleged recovery and arrest. It is further noted that maximum punishment of the alleged offence as provided in the act is three years which does not fall within the prohibitory clause of section 497 Cr.P.C, therefore in such a situation grant of bail is a rule and refusal is an exception. There is no exceptional ground available on record to withhold the bail of Applicant.

8. Moreover, the Applicant is a first offender and it is yet to be determined at trial whether Applicant has committed the alleged offence and till then the case of the Applicant requires further inquiry as envisaged under section 497(2) Cr.P.C.

9. In view of what has been observed above, the Applicant is granted post-arrest bail in aforementioned crime subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court. However, in case the Applicant during trial of the case misuses the concession of bail, the trial Court would be fully competent to take action against the Applicant and his surety in accordance with law.

10. Needless to mention here that the observations made hereinabove are tentative in nature and the trial Court while deciding the case on merits shall not be influenced upon by any of the same.

11. Bail application stands disposed.

JUDGE

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