

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

Cr. Bail Application No.S-971 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

09.10.2015.

Mr. Ali Ahmed Zaman Patoli, Advocate for applicant.
Mr. Irum Ahmed, D.D.P.P. for the State.

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ABDUL MALIK GADDI,J- Having remained unsuccessful in obtaining his release on bail from the trial Court in crime No.74 of 2015, registered under Article ¾ Prohibition (Enforcement of Hadd) Order, 1979 of P.S. Kario Ganhwar, the applicant Moolchand alias Bashir is now seeking his release on bail through instant bail application.

2. Succinct facts as unfolded in the F.I.R. are that on 03.8.2015 a police party headed by ASI Nazim Hussain Chalgiri of P.S. Kario Ganhwar was on patrolling duty vide entry No.16 at 1100 hours, during patrolling duty he received information that above named accused is preparing wine by installing a Bhathi on the western bank of Naun Wah Mari in the jungle of jar, on such information police party conducted raid at pointed place, where arrested present accused and recovery about 150 liters unprepared and prepared desi wine lying in different articles, hence he prepared memo of arrest and recovery and brought accused and property at Police Station where he got lodged instant F.I.R.

3. Learned counsel for applicant/accused submitted that the applicant/accused is innocent and has been falsely implicated by the police, nothing has been recovered from the applicant, but allegedly property has been foisted upon the applicant/accused with malafide intention and ulterior motives and further submitted that the applicant/accused was allegedly arrested from the populated area despite of the fact that police did not make any private mashirs of arrest and recovery, therefore, false implication of the applicant/accused in this case cannot be ruled out. He further submitted that the witnesses are police officials and article 3 is not applicable whereas

article 4 is bailable, therefore, offence does not fall under the prohibitory clause of section 497, Cr.P.C. He further submitted that challan against the applicant/accused has already been submitted and he is no more required for further investigation; the applicant has not remained involved in any criminal case in past. Lastly, he submitted that the applicant is behind the bar since his arrest.

4. On the other hand, learned D.D.P.P. for the State has opposed this bail application on the ground that this applicant/accused was found in possession of prepared and un-prepared of wine with manufacturing apprentice which has made the case of manufacturing wine in large quantity. He further submitted that the applicant is involved in a case of heinous in nature, therefore, he is not entitled for bail.

5. Heard and perused the record.

6. It is an admitted position that the case has been challaned. Applicant is no more required for further investigation. The prosecution witnesses are police officials, therefore, there is no apprehension of tampering of the prosecution evidence. There is nothing on record to show that the applicant/accused is previous convict. It is also an admitted fact that the incident has taken place in day time and possibility of private witnesses at that time cannot be ruled out and complainant party had advanced information about the availability of the present applicant at the place of incident, despite of this fact the complainant has not made any efforts to associate or take with him any independent person of the locality to act as mashir of the event. This fact also requires further probe. No doubt, the evidence of police officials is as good as other, but when the whole case of the prosecution rest upon the evidence of police officials, therefore, their evidence are required to be thoroughly scrutinized at the time of trial to ascertain whether the offence, as alleged by the prosecution, has been taken place in a fashion as alleged by the prosecution or otherwise. The present applicant/accused has been booked under Article 3/4 of Prohibition (Enforcement of Hadd) Order, 1979. The offence under Article 4 is bailable whereas Article 3 of Prohibition (Enforcement of Hadd) Order, 1979 though non-bailable, but the punishment of the said article is not more than three years, therefore, the case of the applicant/accused on this score also do not fall within the prohibitory clause of section 497,Cr.P.C.

7. I have gone through the case law reported as TARIQ BASHIR & 5 others v. STATE (PLD 1995 SC 34). In this authority, it has been held that grant of bail in offences punishable with imprisonment for less than 10 years is a rule and refusal an exception. No exceptional circumstances are appearing in this case to withhold the bail of the present applicant. I, while relying upon the case of TARIQ BASHIR (supra), bail is granted to the applicant, subject to his furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and PR bond in the like amount, to the satisfaction of learned trial Court.

8. Before parting with this order, it is made clear that the above observations are tentative in nature and would not affect the merits of the case.

JUDGE.

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Learned D.D.P.P. merely argued that the punishment for the offence under Article 3 of PEHO is provided for three years, which is no ground for refusal of bail, if otherwise the applicant has made out a case for further inquiry. It is a matter of fact that the offence under Article 4 is bailable while another Article 3 is though non-bailable and punishment of the said section is for three years, therefore, the case does not fall within the ambit of section 497, Cr.P.C. In this case, accused is behind the bar since his arrest, since then not a single witness has been examined and it is yet to be proved through evidence at the time of trial whether the applicant was arrested in a fashion or otherwise, as alleged by the prosecution, as such, under the facts and circumstances, the case of the applicant requires further inquiry.