

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 560 / 2020
Iqbal Memon S/o Noor Muhammad

Date

Order with signature of Judge

For hearing of bail application.

11.05.2020.

Mr. Mansoor Ahmed Turk Advocate for Applicant.
Mr. Siraj Ali K. Chandio Additional Prosecutor General.

Through this bail application, the Applicant seeks post arrest bail in FIR No. 80/2020 registered at P.S. Sujawal, District Thatta under Section(s) 4, 5 & 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The bail application of the Applicant moved before the Trial Court stands dismissed vide order dated 14.04.2020. I have heard the Counsel for the Applicant and learned Additional Prosecutor General. My observations are as under: -

- i) According to the FIR the Applicant was apprehended during snap checking around 2100 hours on 27.3.2020 while riding a motorcycle, and upon search, 11 packets of safeena and 160 puries of javed mava gutka packed in one black shopper were found from his possession which according to the prosecution contained substandard and material injurious to human health; hence, an FIR under the above Act.
- ii) It is noted that the FIR was registered on 27.03.2020, whereas, as informed, the samples were forwarded to the laboratory on 30.3.2020 and received by the laboratory on

3.4.2020. This inordinate delay and consumption of seven days in getting the sampled received by the laboratory has gone unexplained, as if it is a routine delay, which in fact is not. Though a positive report has been received; however, that is a matter of trial.

- iii) As per FIR there are 2 types of materials found from the accused, and one packet of "safeena" and 10 puries of "Javed mava gutka puries" were sealed and sent for testing; whereas, the Laboratory Report dated 30.4.2020 describes them as "10 Wet gutkha plastic pouches and one packet of Safina tobacco gutkha saches". Not only one of the description differs; but so also the packing mode.
- iv) As to delay in sending samples for laboratory tests, (though in Narcotics cases but the ratio applies herein as well), it has been consistently held by the Hon'ble Supreme Court and this Court, that such delay is crucial and an accused cannot be convicted once it is established that no safe custody of the material was established. The prosecutor / I/O however, have not been able to satisfy the Court about delay and how the recovered material was kept in safe custody.
- v) Even otherwise, the punishment provided under Section 8 of the Act may extend to a maximum of three years but shall not be less than one year and but does not falls under the prohibition clause.
- vi) The learned Additional Prosecutor General has opposed the grant of bail on the ground that notwithstanding the above, the offence is under a Special Act and is a crime against society; therefore, even if it does not fall under the prohibition clause; bail must not be granted. Though there is no cavil to this settled proposition; however, while deciding a bail application, the Court is required to look into this aspect on the basis of the facts and

circumstances of each case before it. The rule is not absolute either way.

- vii) Even otherwise, the Honourable Supreme Court in Criminal Petition No. 299/2020 while dealing with grant of bail to under trial prisoners in the current pandemic (COVID-19) and the lockdown has also approved certain recommendations of the learned Attorney General of Pakistan and the case of the present Applicant apparently also falls within such recommendations.

In view of hereinabove facts and circumstances of this case the Applicant has made out a case of further inquiry as to his alleged guilt, and is accordingly admitted to bail on his furnishing surety in the sum of Rs. 30,000/- (Thirty Thousand Only) with P.R. bond in the like amount to the satisfaction of the Trial Court. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law.

J U D G E

Arshad/