

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Bail Application No. 135 of 2020

Applicant : Abdul Jalil S/o Muhammad Naseem,
through Mr. Amanullah Kakar, Advocate.

Respondent : The State, through Mr. Siraj Ali Khan Chandio,
Additional P.G, Sindh.

Date of hearing: 17.04.2020
Date of order: 17.04.2020

ORDER

ABDUL MOBEEN LAKHO J:- Being aggrieved and dissatisfied by the impugned order dated 23.01.2019 passed by the learned Sessions Judge Karachi-East in Crime No. 254 of 2019, the applicant/ accused has approached this Court seeking bail.

2. Briefly stated, the facts of the case are that with reference report number of Roznamcha of P.S New Town, Karachi, that A.S.I Kamal Ahmed Baloch alongwith sub ordinates H.C Ghulam Abbas 2737, PC Ehtisham S/o Bashir Ahmed, P.C/Driver Nasir Qayyum 26570 by government mobile were busy in area patrolling for prevention of crimes, during patrolling received spy information that at Ghousia colony, Sabzri street, Kareem Pan & General Store shop gutka has been selling, hence on this information, the police party reached at the pointed place at 2140 hours and on checking of shopper found unhygienic gutka Raj Guru 172 packets, One Two One (121) Gutka 189 pieces, J.M Gutka 170 pieces, Theker Gutka 59 pieces, the person who was present on shop disclosed his name as Abdul Jaleel S/o Muhammad Naseem, the act of the accused fall U/s. 269/270/336-B PPC, due to non-cooperation of private witness arrested him accordingly, on his further search recovered cash Rs.220/-, recovered gutka sealed on the spot and were taken into police custody, hence this FIR.

3. Learned counsel for the accused/applicant states that applicant is innocent and has falsely been implicated in this case with malafide intention of police party; that the actual and real fact is that the present applicant was picked by police and after that they illegally detained the present applicant/accused in their custody and after that the present applicant shown in the above FIR due to non-fulfillment of bribe, which makes the case of the prosecution highly doubtful and case is required further inquiries and the present applicant/accused is entitled for grant of bail; that from the bar reading of FIR, it appears that all story

narrated by the complainant is false, fictitious, as such no case is made out against the present applicant/accused; that there is no any eye witness of the alleged incident which is clear violation of section 103 Cr.P.C which creates doubt and case is required further of section 497(ii) Cr.P.C hence the applicant/accused is entitled for grant of bail; that applicant/accused has no any concern with the subject material even he has no any shop of pan but the police due to non-fulfillment of amount falsely implicated the accused in the above case, due to which his family has been suffering from starvation; that the learned trial Court has considered the merits and circumstances of the case and passed the impugned order in harsh and hurry manner without touching the merits of the case; that police continuously raiding at the house of applicant/accused and also at the houses of his relatives for arresting the applicant/accused malafidely; that the applicant is apprehending to be arrested, through the hands of police malafidely and in collusion with the complainant; that if the applicant/accused is arrested, he will be humiliated and subjected to be maltreated, which will caused the damages to his reputation status and dignity in the eyes of his friends, colloquies and relatives also; that the applicant is neither harden criminal nor absconder and hence there is no probability of the accused of being absconder or to exercise of commission of crime; that there is no chance of the applicant to temper with the witnesses and the applicant is ready to furnish the solvent surety for the satisfaction of this Hon'ble Court; therefore, he prays for bail.

4. Learned Additional P.G, Sindh representing the State flatly opposed for grant of bail to the present applicant/accused on the ground that applicant/accused are involved in an offence which is injurious against the public health.

5. I have heard the learned counsel for the parties at length and perused the record.

6. On perusal of record it appears that in this matter Sections 269 and 270 of PPC are bailable and their punishment also do not fall within the prohibitory clause of Section 497 Cr.P.C. However, as far as the applicability of Section of 337-J of PPC in the case in hand is concerned which is being reproduced for ready reference:

...

337-J. Causing hurt by means of a poison. Whoever administers to, or causes to be taken by, any person, any poison or any stupefying, intoxicating or unwholesome drug or such other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause

hurt may, in addition to the punishment of *arsh* or *daman* provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years.

...

7. The perusal of the above section shows that the ingredients of the above section are yet to be determined which can only be done at the trial after recording of evidence. That the alleged hazardous/ poisonous substance recovered from the shopper pickup was not administered to anybody at the hands of applicant and so also there is no private eye-witness. In this backdrop at this stage, it cannot be said that the applicant is responsible for causing hurt through administration of poisonous material to anybody.

8. In view of the foregoing, learned counsel for the applicant has made out a case of further enquiry within the meaning of subsection 2 of section 497. Therefore, interim pre-arrest bail granted to the applicant/ accused by this Court vide order dated 03.02.2020 is hereby confirmed on the same terms and conditions. The applicant/accused shall attend the trial Court.

This Criminal Bail Application stands disposed of in the same terms.

JUDGE

Jamil Ahmed / P.A