

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Bail Application No.699 of 2020

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DATE            ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing of bail application

Arslan Khan & Arsala Khan    ..Vs...    The State

**09.06.2020**

Mr. Rawas Khan, advocate for the applicant.  
Ms. Rahat Ahsan, Addl.P.G. Sindh.  
SSP Investigation, Imran  
SIP Liaq Ali, Tariffi Branch, Hyderabad.

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1. Through instant bail application, applicant/accused seeks bail after arrest in **FIR No.21/2020**, under **Section 3/4/5 & 6** Sindh Prohibition of Preparation Manufacturing, Storage, Sale and use of Gutka & Mainpuri Act, 2019 registered at police station Dhabaji. Earlier the applicant/accused approached the IInd Addl. Sessions Judge, Thatta, for post arrest bail, which was declined vide order dated **04.05.2020**. Thereafter, the applicant approached this Court for grant of post arrest bail.

2. Brief facts of the prosecution case are that on 24.4.2020 at 0110 hours complainant SIP Liaq Ali Burero of P.S Dhabeji lodged FIR stating therein that he was posted at SIP at PS, on 23.4.2020 complainant alongwith staff left P.S vide entry No.13 at about 1740 hours for patrolling in the area, from different places when they reached at National Highway road CNG pump where they started checking of vehicles, on 24.4.2020 at about 0015 hours one Rickshaw came from Karachi side in which two persons were boarded, complainant party checked Rickshaw and found two plastic Kattas were lying, opened it, in which packets of poisoning tobacco Raja Jani, 2. Najma Pakiza, 3. Najma Zafrani and one shopper containing

with 50 puries prepared Mawa, on commission of such offence, arrested them, interrogated about their whereabouts they disclosed their names Ashala Khan from his body search recovered Rs.200/- and second disclosed his name Nazeer Ahmed Soomro, from his body search recovered Rs.100/- they disclosed that they both used to prepare Mawa and sell it, got weighed recovered tobacco, which became 30 kilo, out of recovered tobacco 3 puries and 10 puries sealed for chemical examinations, prepared such mashirnama of arrest and recovery, then arrested accused and recovered property brought at P.S and lodged instant FIR. The arrested accused and recovered property brought at police station where lodged the FIR on behalf of state.

3. Learned counsel for the applicant contended that applicant/accused is innocent and has falsely been implicated in this case with malafide intention and nothing has been recovered from the possession of the applicant/accused and the alleged recovery has been foisted upon the applicant by the police officials due to non-giving illegal gratification to them. It is further contended that applicant was arrested from a thickly populated area but no step has taken by the complainant to fulfill the mandatory requirement of search providing as contemplated in section 103 Cr.P.C for acquiring two independent and respectable persons of the locality as such independent and respectable person of the locality as such the matter requires further inquiry.

4. Learned Addl. P.G opposed the bail application contending that recovery has been affected from the accused.

5. While hearing the bail application on **08.06.2020** I have passed the following order.

“The precise issue in this case is that from the record it appears that willfully no proper investigation has been conducted by the investigating officer after recovery of 50 packets of Gutka and 30 Kgs Patti for preparation of Mawa/Gutka from the custody of accused. However, instead of conducting enquiry and raiding the persons or the place where the recovered material was to be used for preparation of prohibited Mawa/Gutka and the I.O could not identify the owners of the material recovered from the applicant/ accused. The DSP submitted statement in handwriting mentioning therein that he has called the I.O in his office along with documents and asked him about the investigation, the I.O informed the DSP that the applicants have confessed that the material belongs to them but they did not answer that from where they have obtained the alleged material of Mawa/Gutka. It shows that material has been foisted on the innocent persons or the investigating officer is trying to protect the actual culprits who are involved in preparation of Mawa/Gutka and sale in the market, therefore, SSP Investigation should be present in Court tomorrow i.e **09.06.2020**”.

6. Heard the learned counsel for the parties today and I have noticed as under:-

- i. The SSP Investigation concedes that there was bad investigation in this case and he is taking action against the Investigating Officer. This statement by itself is enough to grant bail to the present applicant.
- ii. Applicant/accused is behind the bars for more than two months and is no more required for further investigation; therefore, no useful purpose would be served by keeping the applicant behind the bars for indefinite period.

- iii. There is no CRO against the present applicant and this is only the case in which applicant has been arrested.

6. In view of the above, the applicant / accused is admitted to bail subject to furnishing solvent surety in the sum of **Rs.50,000/-** and P.R bond in the like amount to the satisfaction of trial Court. The SSP Investigation is directed to submit report with action against the relevant Investigating Officer for defective inquiry and investigation through the MIT-II of this Court within one month.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant/accused on merits.

*SM*

**JUDGE**