

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. B.A. No.S- 708 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection.
- 2. For hearing of main case.

10.08.2020

Ms. Ambreen Siyal, 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 his release on bail from the trial Court in Crime No.23 of 2020, registered at Police Station Fort Hyderabad, under section 08 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Using Gutka and Mainpuri Act, 2019, the Applicant (Abid Gaddi) has approached this Court for same relief in same crime.

2. The allegation against the Applicant / accused is that on 11.07.2020, he was found in possession 800 sachet (weighing 15 kilo and 200 grams) of harmful mainpuries at Goods Naka Road, Near Yasrab Hotel and accordingly apprehended by the police party headed by complainant / SIP Abdul Ghaffar at 0830 hours and aforementioned harmful mainpuris were recovered from his possession in presence of mashirs.

3. Learned counsel for the Applicant argued the case in line of the grounds as mentioned in bail application and further contended that present incident is result of enmity with the police. She further argued that the present incident is a daytime offence and the place of incident was a thickly populated area however, no private / independent person was picked up to act as mashir or arrest and recovery; thus, according to her non-joining the private person in the recovery proceedings gives jolt to the prosecution story and requires further probe.

4. Learned D.P.G while opposing the bail application, contended that huge quantity of harmful mainpuris has been recovered from the possession of Applicant, hence he is not entitled for any relief at this stage.

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 the question from the learned DPG that whether chemical examiner's report in respect of the recovered item / mainpuris 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. This aspect of the case requires detailed inquiry.

7. It is also noted that alleged offence took place in broad day light i.e. 0830 hours (morning time) and place of incident i.e. Goods Naka, Yasrab Hotel is said to be thickly 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 for 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 or otherwise, and till then 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 the 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