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

Criminal Bail Application No.S-684 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

__10.08.2020__

Mr. Abdul Rasool Abbasi, Advocate along-with the applicant.
Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General, Sindh.
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ORDER

___ABDUL MAALIK GADDI, J-___   The applicant/accused is present on bail granted to him by this Court vide order dated 21.07.2020. Today, this bail application is fixed for confirmation of bail or otherwise.

The allegation against the present applicant/accused is that 07.07.2020 at 1300 hours complainant ASI Ali Gul Khoso found accused in possession of six big and small cartons of water, who on seeing police party made his escape good; thereafter police secured said property containing 20 bottles of wine of red color, 31 bottles of PAO of red color, 58 bottles of wine (ADHIYA) 86 (PAO) wine bottles of white color, for which, present case was registered against present applicant/accused on behalf of the State.

It is argued by learned counsel for the applicant that present applicant/accused has been involved in this case falsely as there is no recovery of contraband wine from his exclusive possession; that the witnesses cited in present case are police officials and no independent person was acted as mashir of the case; that punishment of article 3 P.E.H.O is five years and punishment of article 4 P.E.H.O is two years, thus the offences with which the applicant is charged do not fall within the prohibitory clause of section 497 Cr.P.C, therefore, the learned counsel prays for confirmation of bail. To support his contention, learned counsel for the applicant has relied upon __NASRULLAH Vs. The STATE [2014 MLD 1500].__

As against this, learned Deputy Prosecutor General, Sindh has opposed this bail application on the ground that the applicant on seeing police party fled away from scene of occurrence leaving behind huge quantity of wine which has been secured by the police; and, that no malafide on the part of police is surfaced on the record to falsely implicate the applicant in this case. He lastly prayed for dismissal of present bail application.

Parties Advocates have been heard and record perused.

As per contents of F.I.R alleged quantity of wine was left by the accused while seeing the police party and made his escape good. Admittedly, alleged material has not been exclusively recovered from the possession of the applicant. During course of arguments, I have asked question from the learned Deputy Prosecutor General, Sindh whether chemical report with regard to alleged material is available in police file as admittedly Challan has already been submitted, he replied in negative. It is noted that alleged incident took place in broad day light and from populated area despite of this fact the complainant did not bother to associate any independent person of the locality to witness the event. Nothing on record that when private persons were available their non-joining in recovery proceedings is a question which requires evidence whether the offence has taken place in a fashion as stated in F.I.R or otherwise. It is also noted that the offences under which the applicant/accused has been booked do not fall well within the ambit of section 497 Cr.P.C. Under such circumstances, grant of bail is a rule and refusal is an exception and no exceptional ground appearing in this case to withhold the bail of the applicant, therefore, the interim order 21.07.2020 already passed by this Court stands confirmed on same terms and conditions with directions to the applicant to appear before Trial Court to face trial.

Needless to mention here that any observation in this order is tentative in nature and shall not effect the merits of the case.

Before parting with this order, I would like to make it clear that in case during proceedings if, the applicant misuses the concession of bail, then presiding officer of the Trial Court would be competent to cancel his bail without making any reference to this Court.

JUDGE

*Muhammad Danish Steno**