

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

Criminal Bail Application No.S-650 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

18.08.2020

Mr. Farhad Ali Abro, Advocate for applicants.

Mr. Nazar Muhammad Memon, Addl.P.G.

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RASHIDA ASAD, J: Through this application, the applicants Waseem Ahmed and Aijaz Ahmed seek post-arrest bail in Crime No.63/2020 registered at P.S City, Hyderabad, for offences under section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storing, Sale and Using Gutka and Manpuri Act, 2019, after dismissal of their bail application by the trial court.

2. Brief facts of the case are that on 06.06.2020 at 1600 hours complainant SIP Muhammad Arif Mughal while snap checking of vehicles stopped a car at Qadri Masjid Chowk near Café Firdous and recovered 50 packets of JND Gutka in possession of each applicant. Both were apprehended and according to prosecution, the recovered substance is injurious to human health.

3. It is, inter alia, contended by learned Counsel for the applicants that the applicants are innocent and have been falsely implicated in this case by the complainant with ulterior motives and malafide; that no case under the referred Act is made out against the applicants and the case property has been foisted upon the applicants; that there is violation of section 103 Cr.P.C; and that the offence with which the applicants are charged carries three (03) years punishment and does not fall within the prohibitory clause of section 497, Cr.P.C. Lastly he prayed for grant of bail to the applicants.

4. Learned Additional Prosecutor General Sindh opposed the grant of bail to the applicants.

5. I have considered submissions of parties and perused material available on record. The section with which the applicants are charged is not bailable but its applicability to the facts and circumstances of the case could only be determined at trial. The evidence of the police officials is required to be scrutinized minutely at the time of trial, whether the alleged incident has taken place in a fashion as stated in the F.I.R. or not. Admittedly, there is no independent witness of the incident though the applicants were alleged to be arrested during day time near a public place. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilty but no proper reparation can be offered from his unjustified incarceration, albeit, their acquittal in the long run. Reliance is placed on the case of ZAIGHAM ASHRAF versus The STATE and others (2016 SCMR 18). Applicants are behind the bars since their arrest and still trial has not been commenced. Applicants are no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstances, which would justify keeping the applicants behind the bars for an indefinite period. All the P.Ws are police officials, hence there is no question of tampering the evidence, therefore, keeping in view the peculiar circumstances of instant case, I am of the view that scale tilts in favour of the applicants for grant of bail as no useful purpose is likely to be served with further detention of applicants pending determination of their guilt. Under these circumstances, a case for release of the applicants on bail on point of further inquiry pending trial, obviously is made out.

6. In view of above, the bail application was allowed and the applicants were granted bail subject to their furnishing solvent surety in the sum of Rs.1,00,000/- (one lac) each and P.R Bond in the like amount to the satisfaction of trial court by my short order dated 17.08.2020 and these are the reasons of the same.

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 applicant on merits.

August 18th, 2020.

JUDGE

Ali Haider

