

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

Criminal Bail Application No.S-728 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

Mr. Altaf Hussain Chandio, Advocate for applicant.

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

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RASHIDA ASAD, J: Through this application, the applicant Nadir Khan seeks post-arrest bail in Crime No.165/2020 registered at P.S B-Section Nawabshah, for offence under sections 4-5/8 of Sindh Prohibition of Preparation, Manufacturing, Storing, Sale and Use of Gutka and Manpuri Act, 2019, after having failed to obtain such relief from the trial court.

2. Brief facts of the case are that on 19.07.2020 at 1600 hours complainant SIP Ali Mardan Lund apprehended the applicant, near 60th Mile Phattak, Deh 87 Nawabshah, District Shaheed Benazirabad, from a white coloured car and recovered 10 gunny bags of Suparies, for manufacturing Mainpuri Gutka, weighing 100 kg and 20 packets of Z-21 Gutka weighing 5000 gram. According to prosecution, the recovered substance is injurious to human health.

3. It is, inter alia, contended by learned Counsel for the applicant that the applicant is innocent and has been falsely implicated in this case by the complainant with ulterior motives and malafide; that the alleged recovery was not effected from the exclusive possession of the applicant; that the case under sections 4-5/8 of Sindh Prohibition of Preparation, Manufacturing, Storing, Sale and Use of Gutka and Manpuri Act, 2019, is not made out against the applicant; that the case property has been foisted upon the applicant; that there is violation of section 103 Cr.P.C; and that the offences with which the applicant is 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 applicant.

5. I have considered submissions of parties and perused material available on record. The sections with which the applicant is charged are notailable but their

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. 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, his acquittal in the long run. Reliance is placed on the case of ZAIGHAM ASHRAF versus The STATE and others (2016 SCMR 18). Applicant is behind the bars since his arrest and still trial has not been commenced. Applicant is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstances, which would justify keeping the applicant 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 applicant for grant of bail as no useful purpose is likely to be served with further detention of applicant pending determination of his guilt. Under these circumstances, a case for release of the applicant on bail, on point of further inquiry is made out.

6. In view of above, the bail application was allowed and the applicant was granted bail subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (one lac) and P.R Bond in the like amount to the satisfaction of trial court by my short order dated 24.08.2020 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.

JUDGE

August 31th, 2020.

Ali Haider

