

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1211 of 2020

Applicants : (i) Shahzaib S/o Abdul Razzaq
(ii) Kamran S/o Abdul Bashar
(iii) Sher Ahmed S/o Noor Muhammad
Through Mr. Muhammad Rizwan Khan
Advocate

Respondent : The State
Through Mr. Talib Ali Memon,
Assistant Prosecutor General, Sindh
alongwith ASIP Muhammad Akbar

Date of hearing : 14.09.2020

Date of order : 14.09.2020

O R D E R

AMJAD ALI SAHITO, J -- Through this Bail Application, applicants/accused seek post-arrest bail in Crime No.511/2020 registered under Sections 2, 3, 4, 8 of Sindh Prohibition Mawa Gutka Act, 2019 at PS Sachal, after their bail plea has been declined by Additional Sessions Judge-II Mali, Karachi vide order dated 07.07.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused has mainly contended that applicants/accused are innocent and have falsely been implicated in this case; that alleged Chalia does not fall within the definition of sections 2, 3, 4, 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019; that the maximum punishment provided under these sections is three years and now less than one year; that applicants/accused are in jail

and no more required further investigation. He lastly prays for grant of post-arrest bail to the applicants/accused.

4. On the other hand, learned APG has vehemently opposed for grant of bail to the applicants/accused and submits a chemical report issued by Director Laboratories & Chemical Examiner to the Government of Sindh, Karachi which shows that the alleged chalia is infest, debris and fungus.

5. I have heard the learned counsel for the parties and have gone through the material available on record. It reveals that the names of the applicants/accused find place in the FIR with specific role that during patrolling, the police stopped one Mazda vehicle and recovered 27 big kattas (sack) and 14 small kattas (sack) and thereafter out of which some quantity was sent to chemical examiner, which report shows that one sealed parcel containing gms betel nuts sub-standards which test performed and found infest, debris and fungus. So far the learned counsel for the applicants/accused's contention that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., grant of bail is a rule and refusal is an exception. It is correct that the alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C. and is the maximum punishable up to three years R.I and ordinarily in such like cases grant of bail is a rule and refusal is an exception. The legislature had intentionally kept this offence as non-bailable and it has consistently been held by this Court as well as the Hon'ble Supreme Court of Pakistan that in non-bailable offences grant of bail is not the right of an accused and it is a concession. Reference may well be made to the case of **Shameel Ahmed Vs. The State (2009 SCMR 174)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

“4.....Bail in a case not falling within the prohibitory clause of S. 497, Cr.P.C. --- Principles--- Grant of bail in cases not falling within the domain of prohibition clause of proviso to S.497, Cr.P.C. is not a rule of universal application--Each

case has to be seen through its own facts and circumstances--Grant of bail, no doubt, is a discretion granted to a Court, but its exercise cannot be arbitrary, fanciful or perverse."

In another case of **Mehmood Siddique Vs. Imtiaz Begum and two others (2002 SCMR 442)** wherein the Hon'ble Supreme Court of Pakistan held that:-

"4.....None can claim that bail as of right is non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C."

6. In view of the above, learned counsel for the applicants/accused has failed to make out a case for grant of post-arrest bail to the applicants/accused. Resultantly, the instant bail application merits no consideration, which is **dismissed** accordingly.

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

JUDGE

Kamran/PA