

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

Cr.Bail.Appl.No.S- 1420 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

03.02.2020.

Mr. Mian Taj Muhammad Keerio, Advocate for applicant alongwith applicant (on interim bail).

Ms. Rameshan Oad, A.P.G. for the State.

=

Through this bail application, applicant seeks pre-arrest bail in Crime No.142 of 2019 registered u/s 269, 270, 273 & 337-J PPC at P.S Sanghar.

2. The allegation against applicant / accused per FIR is that on 08.09.2019 at 1730 hours near women vocational training building at Hyderabad while coming in a Corolla car, on seeing the police party, he made his escape good by taking the advantage of crops leaving the said car at spot. However from the said car police secured three Kattas from back seat of the car and four Kattas from Digi of the car, one Katta containing 5 shoppers and in one shopper there were 6 bundles each shopper contained 50 Mava Gutka from each Kattas 1500 Sachets. Total 10500 Sachets of Mava Gutka. He was identified by police party as he was already challaned at P.S Tando Adam City.

3. Mr. Keerio submits that recovery was not made from the exclusive possession of applicant and it was allegedly recovered from the car and he was stated to be found in possession of 10500 Sachets of Mava Gutka; however, after recovery and his arrest he was bailed out by police themselves on an undertaking given by their Nekmard of locality as at the time of alleged offence viz. 08.09.2019, the judgment passed by this Court in C.P.No.D- 868 of 2019 was not in field and subsequently it was delivered on 03.10.2019, therefore at the time of challan Section 337-J PPC has been added, hence,

the applicant feeling apprehension of his arrest at the hands of police had approached to Sessions Judge concerned where his request for bail was turned down by means of order dated 10.12.2019, hence, has approached this Court through this bail application. The main contention of learned counsel for applicant is that neither the applicant manufactured the alleged Mava Gutka nor was found selling it in public thorough place which is the main aspect of judgment (supra). He further submits that mere positive report issued by concerned laboratory does not constitute any offence or proof that applicant was selling or manufacturing and was administering the same to any person who allegedly had made any complaint against him before the police. He further submits that basic ingredients of Section 337-J PPC are lacking in this case. He therefore, submits that applicant being innocent has been falsely implicated by police, therefore, interim pre-arrest bail granted to him earlier may be confirmed. In support of his contention he has placed reliance upon the case of Hafiz Mohammad Shehzad v. The State (2019 MLD 1588).

4. On the other hand, learned A.P.G. opposes the bail application on the ground that huge quantity of Mava Gutka was recovered from the car driven by applicant and such act for which he was found doing is hazardous as well injurious to the lives of community particularly for young generation. She; however, could not controvert as to whether any consumer or customer who allegedly had purchased the said Mava Gutka from him was found nearby to him and subsequently was examined.

5. Heard arguments. Record perused.

6. I have gone through judgment passed by this Court (supra) and find that sprit of it is to the extent of selling and manufacturing. In this case, police have failed to examine any person who allegedly was found purchasing Mava Gutka from applicant and / or the applicant was administering the same to him and such complaint has ever been made by any person from society to show

that applicant had been involved in such an injurious case nor the said Mava Gutka was recovered from the exclusive possession of the applicant. Since the applicant has been enjoying liberal life after grant of bail to him by 1st forum as well by this Court and the offence with which he has been charged is yet to be established by prosecution after recording evidence. Mere fact that offence carries or involved with maximum punishment does not intercept the way to withheld concession of bail to him. It is settled law that every accused is presumed to be blue eye boy of law until and unless he is found guilty of charge and law cannot be stretched upon in favour of prosecution particularly at bail stage.

7. In view of above discussion, I am of considered view that applicant has successfully made out a good prima facie case for his admission on pre-arrest bail and his case is purely covered by subsection (2) to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicant on 17.12.2019 is hereby confirmed on same terms and conditions. The applicant present is directed to continue his appearance before the Trial Court without fail till final decision of main case.

JUDGE

Tufail/PA