

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1964 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

27.01.2021

Mr. Zahid Iqbal, Advocate along with Applicant (on bail).
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Waheedullah seeks his admission on pre-arrest bail in Crime No.202/2020 of Police Station Bin Qasim, Karachi, under Section 269/270 PPC read with Section 8 of Gutka Mawa Act. The bail plea preferred by him before first forum was declined by means of order dated 24.07.2020, hence this bail application.

Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with Court file, therefore, there is no need to reproduce the same.

Learned counsel submits that applicant was not accompanied with co-accused Ghulam Shah at the time of transportation of the alleged tobacco leaves and after his arrest, co-accused disclosed before the police that truck in question was got loaded by the applicant, which was being transported towards interior Sindh. He next submits that punishment provided by the law is not beyond the scope of prohibitory clause of Section 497 Cr.P.C; hence, submits that by granting application, interim granted to applicant earlier, may be confirmed.

On the other hand, learned Deputy P.G, Sindh opposes the bail application on the ground that huge quantity of tobacco leaves was loaded at the instance of applicant and applicant has not denied ownership of the vehicle. She; however, could not controvert the fact that driver Ghulam Shah, who at the time of incident was driving truck, has been granted bail by this Court.

Heard arguments and perused record. Admittedly, the applicant was not found in possession of the tobacco leaves, which were lying in the truck driven by co-accused Ghulam Shah; however, has been arrayed upon

the basis of statement of co-accused Ghulam Shah. The statement of co-accused is yet to be established by the prosecution after recording evidence of prosecution witnesses before the trial Court and the trial Court being competent has to determine accusation against applicant. As far as, punishment provided by the law for section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, is 3 years and the applicant as stated is first offender, therefore, case against him does not fall within the ambit of prohibitory clause of section 497 Cr.P.C. Co-accused Ghulam Shah, from whose possession truck in question as well as contraband was stated to have been recovered, has already been bailed out by this Court vide order dated 26.08.2020 (Criminal Bail Application No.1174/2020). Mere contention on behalf of prosecution that applicant may be taken into custody is no ground as after putting him in jail, tomorrow again he will be bailed out on the ground of consistency. Reliance can be placed upon the case of *MUHAMMAD RAMZAN Versus ZAFAR ULLAH and another (1986 SCMR 1380)*.

In the circumstances and in view of above, case against applicant requires further inquiry within the meaning of sub-section 2 to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed; interim bail granted earlier to applicant **Waheedullah son of Anwar Khan** on 17.12.2020 is hereby confirmed on same terms and conditions.

Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case he may misuse the concession or may temper with the prosecution's evidence then the trial Court is competent to take legal action against him as well to his surety in terms of Section 514 Cr.PC. Trial Court is also hereby directed to make necessary arrangements for securing attendance of the prosecution witnesses and conclude the trial within shortest possible time under intimation to this Court through MIT-II.

Let copy of this Order be communicated to trial Court through learned Sessions Judge, concerned, over fax, for compliance.

JUDGE