

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.165 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case.

17.02.2021

Syed yasir Ali Shah, Advocate for the Applicants.
Mr. Muntazir Mehdi, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, I - Through this application, Applicants seek their admission on post arrest bail in Crime No.03.2021, registered at Police Station Thatta, u/s 3, 4, 5, 8 of the Sindh Prohibition of Preparation Manufacturing, Storage, Sale and use of Gutka and Manpuri Act, 2019 (Sindh Act No.III, 2020) (The Act). Earlier, the bail plea raised by the applicants before first forum has been declined by the Sessions Judge, Thatta in terms of order dated 19.01.2021; hence, have approached to this Court.

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

3. Learned counsel for the applicants submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2020 (herein after referred as Act, 2020) is three years hence, does not exceed limits of prohibitory clause of Section 497(i) C.P.C. He further submits that applicants are first offenders, therefore, they deserve leniency. He next submits that in such like cases grant of bail is a rule while refusal will be an exception. He therefore, prays that applicants may be granted bail.

4. Conversely, learned Addl. P.G appearing for the State, does not oppose the bail application.

5. Heard learned counsel for applicant, learned D.P.G for the State and perused record as well as Act, 2020.

6. It appears that applicant has been shown to have in possession of raw mainpuri powder (Churo Supari), which he allegedly was transporting and subsequently was intercepted and apprehended by police. The allegation

leveled by prosecution in the F.I.R falls within the definition of sections 3, 4, 5, 6 and 7 of the Act, 2020, which are punishable u/s 8 of the Act, 2020. For sake and convenience, it will be appropriate to reproduce section 8 of said Act which reads as under:-

8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lacs (two hundred thousand) rupees.

(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees.

7. Prima facie, the punishment u/s 8 (1) as provided by the Act, 2020, is three (03) years which does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of Tarique Bashir & 5 others v. The State (PLD 1995 SC page 34) and Muhammad Tanvir and another v. The State (PLD 2017 SC page 733).

8. In view of the above legal position, I am of the view that applicants have successfully made out a good prima facie case of further enquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, Applicants **Waseem Hyder son of Ali Hyder and Anwer Kashif son of Gulab Khan** are admitted to bail subject to their furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) each and PR bond in the like amount to the satisfaction of trial Court.

9. It need not to reiterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Zulfiqar/P.A