

**IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.**

**Cr. Bail Application No.S-1094 of 2021**

Applicant: Muhammad Asif, through Mr. MianTaj Muhammad Keerio and Mr. PeeralMajeedano advocates.

State: Through Mr. Fayaz Hussain Sabki, APG

Date of hearing: 03.01.2022  
Date of decision: 03.01.2022

**ORDER**

**Zulfiqar Ali Sangi, J:** Through this bail application, the applicant/accused Muhammad Asif seeks post-arrest bail in Crime No. 192/2021, registered at police station Khipro, for offences under sections 5-8/1 of Sindh Prohibition of PMS Sale and Use of Gutka, Manpuri Act 2019. Earlier on approach his bail application was declined by Learned Additional Sessions Judge Khiprovide order dated 23.11.2021.

2. On 16-10-2021, SIP Sultan Ahmed Keerioof Police Station Khipro, while on patrolling within the jurisdiction has arrested the applicant and recovered from his possession 450 packets of ZEHENGutka containing 49500 sachets, found it hazardous and in violation of law took in to possession and then registered the above FIR.

3. Learned Counsel for the Applicant, at the very outset, submits that the applicant is innocent and was involved by the police with malafide intentions; that all the witnesses are police officials and are sub-ordinate to the complainant; that no private mashir was associated in the recovery proceedings; that alleged articles were foisted upon the applicant and nothing was recovered from his possession; that the offence does not fall within the prohibitory clause of section 497 Cr.P.C, hence the applicant is entitled for grant of bail.

4. Learned APG while opposing the bail application submits that the applicant/accused has committed the offence

which is heinous one and against the society; that mere on the ground that the offence not falling within prohibitory clause of section 497 Cr.P.C no one is entitle for grant of bail automatically; that huge quantity of hazardous material was recovered from the possession of the applicant therefore the applicant is not entitled for the concession of bail.

5. I have heard learned Counsel for the Applicant as well as APG for the State and have gone through the material available on record with their able assistance.

6. Record reflects that alleged recovery was affected from the populated area but no private person was associates as witness in the proceedings nor the complainant tried. All the witnesses are police officials; therefore, there is no apprehension of tempering the evidence. The investigation of case is completed and the challan has been filed before the court having jurisdiction, therefore, the custody of applicant is not required for further investigation.

7. For the violation of section 5 of the G & MP Act, 2019, punishment is provided in section 8 of the said act which is up to 03 years but shall not less than 01 year and fine of rupees two lacs. It is settled by now that while deciding the question of bail lesser sentence is to be considered. In **Shahmoro's case 2006 YLR 3167** while considering the lesser sentence of the offence this Court granted bail to the accused. As has been discussed above in respect of the punishment provided for the alleged offence for which the applicant is charged, the same provided maximum punishment up to 03 years which even does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in these case is right while refusal is an exception as has been held by Honourable Supreme Court of Pakistan in cases of **Tarique Bashir V. State (PLD 1995 SC 34)**, **Zafar Iqbal V. Muhammad Anwar (2009 SCMR 1488)**, **Muhammad Tanveer V. State (PLD 2017 SC 733)** and **Shaikh Abdul Raheem V. The State etc (2021 SCMR 822)**.

8. The Honourable Supreme Court in case of Muhammad Imran (Crl.P.860-L/2021) vide order dated: 05-08-2021 has

formulated the grounds for the case to fall within the exception meriting denial of bail as (a). the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further Honourable Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicant. It is also settled by the Honourable Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record.

9. From the tentative assessment of the record the applicant has make out his case for further inquiry. Resultantly, this application is allowed the applicant is granted bail subject to furnishing his solvent surety in the sum of Rs: 50,000/= (Fifty thousands) and PR bond in the like amount to the satisfaction of the trial court.

10. The above bail application is disposed of in the above terms.

JUDGE