

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2368 of 2021

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

10.01.2022

Mr. Muhammad Ashfaq, Advocate for the Applicant.
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, I - Through this application, Applicant Mohammad Mussa seek his release on post arrest bail in Crime No.568/2021, registered at Police Station Gadaap City, Karachi u/s 8 A(i) of the Sindh Prohibition of Preparation Manufacturing, Storage, Sale and use of Gutka and Manpuri Act, 2019 (Sindh Act No.III, 2020) (The Act). The case has been challaned by the police on 24.12.2021 which is now pending for preliminary proceedings before the Court of Judicial Magistrate-XII, Malir Karachi; however, the applicant preferred his bail plea (Criminal Bail Application No.5393/2021) before the Court of Sessions, which was turned down in terms of order dated 07.12.2021; hence, he has approached to this Court through instant bail application.

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 applicant 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 applicant is the first offender, therefore, he deserves 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 applicant may be granted bail.

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

5. Heard learned counsel for applicant, learned A.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 items used for preparation of Mawa/Gutka, 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 applicant has 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, Applicant **Mohammad Mussa son of Muhammad Yousaf Shaikh** is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of trial Court/Court of Sessions.

9. As reported, the case after submission of challan, is still pending before Judicial Magistrate-XII, Malir Karachi and per available record there is no other accused at large for whom preliminary proceedings in terms of dicta laid down by Hon'ble Supreme Court of Pakistan in case of MUHAMMAD RAMZAN

Versus RAHIB and others (PLD 2010 SC 585), are required, therefore, retaining of case papers and non-compliance of section 190 Cr.P.C on the part of Judicial Magistrate concerned, needs explanation. Accordingly, copy of this order be communicated to the Court of Sessions which is the ultimate Court of the trial for furnishing surety before it. Learned Sessions Judge Malir Karachi is also directed to call R&Ps/ case papers from the Magistrate, for further proceedings according to law.

10. 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