

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1310 of 2021

Date	Order with signature of Judge
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For hearing of bail application :

09.12.2021 :

Mr. Abdul Ghaffar Shar, advocate for the applicant / accused.

Mr. Saleem Akhtar, Addl. P.G. a/w SIP Amanullah of
P.S. SITE Super Highway.

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NADEEM AKHTAR, J. – Through this bail application under Section 497 Cr.P.C., the applicant / accused Shabbir Ahmed seeks admission to post-arrest bail in Crime No.624/2021 registered against him on 12.05.2021 at P.S. SITE Super Highway Karachi East, under Section 23(1)(a) of the Sindh Arms Act, 2013 (**'the Act of 2013'**).

2. According to the subject FIR lodged by the complainant S.I. Shaukat Ali, the present applicant / accused was arrested in Crime No.623/2021 registered against him on 12.05.2021 at P.S. SITE Super Highway Karachi East, under Section 397 P.P.C. ; and, at the time of his arrest, one 30 bore pistol with a loaded magazine and three live rounds was recovered from him which were seized and sealed on the spot. Upon registration of the subject FIR, the present applicant / accused had filed post-arrest Bail Application No.2478/2021 which was dismissed by the learned IVth Additional Sessions Judge Malir Karachi vide order dated 22.06.2021.

3. It is contended by learned counsel for the applicant that the applicant has been falsely implicated in this case and the alleged recovery has been foisted upon him at the behest of the complainant in Crime No.623/2021 due to enmity and family dispute as the said complainant's sister Najma has contracted marriage with the applicant without her family's consent ; there is apparent malafide on the part of the police ; there is no independent and/or incriminating evidence against the applicant, therefore, the matter requires further inquiry ; the charge sheet has been submitted before the trial Court ; and, there is no apprehension that the evidence will be tampered with or the witnesses will be influenced by the applicant, or he will abscond if he is released on bail.

4. On the other hand the learned Additional Prosecutor General Sindh submits that the applicant / accused has been nominated in the FIR with a specific role, and he was caught red-handed at the scene of the crime with the

pistol. The allegation of malice on the part of the police has been denied by learned Additional Prosecutor General. He, however, concedes that there is no independent evidence against the applicant ; the investigation in this case has been completed ; and, the final charge sheet has been submitted before the learned trial Court.

5. I have heard learned counsel for the applicant / accused and the learned Additional Prosecutor General Sindh, and have also gone through the record. In *Ayaz Ali V/S The State*, **PLD 2014 Sindh 282**, after examining and comparing Sections 23(1)(a) and 24 of the Act of 2013, it was held by a learned single Judge of this Court that Sub-Section 1(a) of Section 23 of the Act of 2013 deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act of 2013 (i.e. ‘license for acquisition and possession of firearms and ammunition’) ; and whereas, Section 24 of the Act of 2013 provides punishment for possessing arms or ammunition, licensed or unlicensed, with the aim to use the same for any unlawful purpose. It was further held that since maximum punishment up to 14 years is provided in Section 23(1)(a) and Section 24 ibid provides punishment up to 10 years, maximum punishment in the case of recovery of a pistol, which falls within the definition of “arms” in terms of Section 2 of the Act of 2013, will be 10 years under Section 24 ibid. It was further held in the above case that the question of quantum of punishment had to be determined by the trial Court as to whether the accused would be liable to maximum punishment or not, and in case of his conviction, whether his case would fall under the prohibitory clause or not. It was also held in the cited case that as all the witnesses were admittedly police officials and the accused was no more required for further investigation, the case was that of further inquiry and accordingly bail was granted.

6. In two unreported cases before this Court viz. Criminal Bail Application No.566/2014 (*Muhammad Ismail V/S The State*) and Criminal Bail Application No.1010/2014 (*Muhammad Shafique V/S The State*) decided on 09.07.2014 and 11.07.2014, respectively, it was held by me that the terms “arms” and “firearms” have been separately and distinctly defined in Clauses (c) and (d), respectively, of Section 2 of the Act of 2013 ; amongst many other articles designed as weapons of offence or defence, “pistols” are included in the definition of “arms” in Clause (c) ibid and not in the definition of “firearms” defined in Clause (d) ibid ; the punishment and penalty for acquiring, possessing, carrying or controlling any “firearm” or ammunition in violation of Section 3 of the Act of 2013 is provided in Section 23(1)(a) ibid, which is

imprisonment for a term which may extend to 14 years and with fine ; and, whereas, the punishment for possessing “arms” or ammunition, licensed or unlicensed, with the aim to use them for any unlawful purpose etc., is provided in Section 24 *ibid*, which is imprisonment for a term which may extend to 10 years and with a fine. It was held in the aforementioned cases that the above clearly shows the intention of the legislature that not only are the offences in relation to “arms” and those relating to “firearms” to be dealt with separately as provided for in the Act of 2013 ; but since punishments having different terms in respect of “arms” and “firearms” have been specified separately in the Act of 2013, punishment under Section 23(1)(a) *ibid* cannot be awarded for an offence committed under Section 24 *ibid*, and vice versa. Post-arrest bail in both the aforementioned cases was granted by this Court.

7. Adverting to the facts of the present case, the prosecution has alleged that a pistol was recovered from the applicant, but he was booked under Section 23(1)(a) of the Act of 2013, which is applicable to “firearm or ammunition” and not to “arms”. As observed above, “pistols” are included in the definition of “arms” in Clause (c) *ibid* and not in the definition of “firearms” defined in Clause (d) *ibid*. Thus, it will be for the trial Court to decide as to whether the provisions of Section 23(1)(a) *ibid* will apply to the applicant’s case or not.

8. According to the prosecution’s own case, the applicant was arrested at a public place in broad daylight, and as such the said place could not be deemed to be deserted at the time of the alleged crime. Despite this position, not a single private and independent person was associated by the police to act as a witness and the FIR does not specifically state as to how many persons were asked by them to act as witness and the names of such persons have also not been disclosed. The police has alleged to have recovered a pistol with loaded magazine and three live bullets from the applicant. It is not the case of the prosecution that the applicant had tried to run away or offered any resistance. On the contrary, it is an admitted position that the applicant, without any resistance, allowed the police to search and arrest him. The applicant is behind the bars since the date of his arrest i.e. 12.05.2021 and in the meantime the investigation has been completed and the charge sheet has been submitted before the trial Court. Therefore, he will not be required for any further investigation. No private or independent person was associated as *mashir* in this case and all the witnesses of the prosecution are admittedly police officials, therefore, the prosecution will be responsible to procure their attendance at the

trial. Thus, there is no question or probability that the evidence will be tampered with or that the prosecution witnesses will be influenced by the applicant if he is enlarged on bail.

9. The present applicant has been granted post-arrest bail by this Court vide order dated 09.12.2021 passed in Criminal Bail Application No.1309/2021 in respect of Crime No.623/2021 registered against him on 12.05.2021 at P.S. SITE Super Highway Karachi East, under Section 397 P.P.C. The *mashirnama*, witnesses and evidence in the subject FIR and the above mentioned FIR are the same. The guilt or innocence of the applicant is yet to be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense before the trial Court who shall then have to decide whether the offence alleged against the applicant falls within the ambit of Section 23(1)(a) *ibid* or not. In view of the above, this case requires further inquiry in my humble opinion. It is well-settled that in the circumstances discussed above, concession of bail should be exercised in favour of the accused as a rule.

10. It is clarified that the observations made herein are tentative in nature which shall not prejudice the case of either party nor shall they influence the learned trial Court in any manner in deciding the case strictly on merits in accordance with law.

11. In view of the above, the applicant Shabbir Ahmed son of Maula Bux is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000.00 (Rupees fifty thousand only) and a P.R. bond for the same amount to the satisfaction of the learned trial Court. The instant bail application stands disposed of in the above terms.

J U D G E