

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

Cr. Bail Application No. 582 of 2021

Date	Order with Signature of Judge
For hearing of bail application	

27.08.2021

Mr. Mashooque Ali Mahar, advocate for the applicant.

Mr. Shawak Rathore, D.P.G.

O R D E R

KHADIM HUSSAIN TUNIO, J- Through instant bail application, applicant Mashooque Ali seeks his admission to post arrest bail in a case bearing crime No. 13/2021 registered at PS Chachhar for offence punishable under section 23(1)(a) of the Sindh Arms Act, 2013. The applicant had earlier approached the Court of learned Sessions Judge, Jamshoro with the same plea, however it was declined vide order dated 09.07.2021.

2. In nutshell, the allegation against the applicant is that he was arrested by the police of P.S. Chachhar on the basis of spy information and from his possession police secured one Kalashnikov along with 30 live rounds in the magazine whereas a separate magazine in his shirt containing 10 more live rounds, for which he failed to produce a license, therefore, present FIR was registered against him.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case; that the prosecution story appears to be false and fabricated; that the alleged recovered Kalashnikov has been foisted upon the applicant; that both the private mashirs have been managed by the police and there is enmity between the private mashirs and the applicant; that the applicant is behind the bars since his arrest; that applicant is no more required for further investigation; that the case of applicant calls for further inquiry.

4. Conversely, learned D.P.G. for State halfheartedly opposed the plea of bail of the applicant.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant and learned D.P.G for the State and have perused the record minutely.

6. I am inclined to grant bail to the applicant/accused for the reasons that investigation is complete and the applicant/accused is no longer required for investigation. The applicant has alleged malafide on the part of the private mashirs and claims they have enmity against him. There is no question of tempering with the evidence and accused is in custody since his arrest. The company of the alleged Kalashnikov was not disclosed in the FIR, nor the number or any markings available on it. It is also contended that Kalashnikov along with 40 live rounds has been foisted upon accused by police due to enmity. Liberty of a person cannot be curtailed without legal justification. No other case of like nature is pending against applicant/accused. There is no progress in the trial. Needless to say that the Court while hearing bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case. In the case of *Jamaluddin alias Zubair Khan v. The State (2012 SCMR 573)*, the Hon'ble Supreme Court has observed as under:-

"Without entering into the merits of the case, as the quantum of sentence has to be commensurate with the quantum of substance recovered, we doubt the petitioner can be awarded maximum sentence provided by the Statute. Needless to say that the Court while hearing petition for bail is not to keep in view the maximum sentence provided by the Statute but the one which is likely to be entailed in the facts and circumstances of the case, the fact that petitioner has been in jail for three months yet commencement of his trial let alone its conclusion is not in sight, would also tilt the scales of justice in favour of bail rather than jail."

7. Pursuant of the above position and discussion, the applicant having made out his case for the grant of bail was admitted to post-arrest bail vide short order dated 27.08.2021. These are the reasons for the same.

8. It is needless to mention here that observation made above are tentative in nature and the trial Court shall not be influenced by the same at the time of deciding the case of applicant on merits.

J U D G E

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