

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Crl. Bail Appln. No. S- 284 of 2021.

Applicants: 1. Asghar Khan Son of Abdul Manan.
2. Din Muhammad son of Peer Muhammad,
Through Mr. Muhammad Ali Napar, Advocate.

Respondent: The State, through Mr. Muhammad Noonari,
Deputy Prosecutor General.

Date of Hearing: 05.07.2021.
Date of Order: 05.07.2021.

O R D E R

Adnan-ul-Karim Memon J: Through the captioned bail application, applicants Asghar Khan and Din Muhammad are seeking post-arrest bail in Crime No.69 of 2021 of Police Station A-Section Thull, District Jacobabad. The allegations against the applicants are that they were found in possession/transporting 300 K.G of betel nut (supari), as such their act falls within the ambit of offenses under Sections 4, 8(I) of The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and use of Gutka and Manpuri Act, 2019. The applicants were arrested on the very day i.e. 4.6.2021; and, their first bail application No.437 of 2021 was rejected by the learned Sessions Judge Jacobabad, vide order dated 10.06.2021 on the ground that they were found in possession/transporting 300 K.G of betel nut (supari), which is injurious to health; and, same position prevailed, when their second bail application was declined vide order dated 22.06.2021 on certain grounds.

2. On the other hand, learned Deputy Prosecutor General, Sindh opposed for grant of bail to the applicants on the same analogy as opined by the learned trial Court twice, with a further assertion that huge recovery has been effected from the possession of the applicants and this offense is against society at large. He supported the impugned orders of dismissal of their bail applications by the trial Court.

3. The grounds agitated by the learned counsel for the applicants that it is yet to be ascertained whether transporting betel nut is an

offense under the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, or otherwise and whether the same is injurious to the health or otherwise. The purported chemical report does not suggest that the Chalia/Manpuri is so dangerous to cause harm to human life; that the case of applicants requires further inquiry. He next contended that the applicants are innocent and have falsely been implicated in this case by the police; that the alleged recovery is neither from the exclusive nor physical and constructive possession of the applicants but the same is foisted upon them later on. Learned Counsel further contended that under Section 14 sub-Section (i) of the Act, 2019 provides that an officer not below the rank of Sub-Inspector of Police or equivalent is authorized to search, arrest and take further steps the aforesaid crime but in the present crime unauthorized police personal has carried out the whole exercise which is prohibited under the law; that the offenses with which the applicants stand charged do not fall within the prohibition contained under Section 497 Cr.P. He lastly prayed for a grant of bail.

4. I have heard the learned counsel for the parties and perused the material available on the record.

5. Tentative assessment of the record reflects the following position:-

i) That the alleged hazardous/ poisonous substance recovered from the alleged possession of applicants was not administered to anybody at the hands of applicants. In this backdrop at this stage, it cannot be said that the applicants are responsible for causing hurt through the administration of poisonous material to anybody.

ii) The learned trial Court has to see whether the applicants were possessing/manufacturing/transporting/selling the Gutka/ Mainpuri or otherwise.

iii) The learned trial Court has to see whether there is any evidence for any purchaser on record to attract the Sections 4, 8(I)

of the Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019;

iii) The learned trial Court has to see whether the District Health Officer Jacobabad sent the alleged substance for chemical examination on 9.6.2021, whereas the same was allegedly recovered on 4.6.2021.

iv) That the chemical report explicitly shows that some brown color material of Cuter seeds of Dates were sent for the report which shows doubt in the prosecution story.

v) Record shows that applicants have been in continuous custody since their arrest on 4.6.2021; and, the prosecution has failed to justify any exceptional circumstance which could justify keeping the applicants behind the bars for an indefinite period.

vi) Moreover, the prosecution has not claimed that the applicants are previously involved in the same nature of cases. Nothing on record that applicants are previously convicted in any case.

vii) Even the learned trial Court is required to see the compliance of Section 14 sub-Section (i) of the Act, 2019, which provides that an officer not below the rank of Sub-Inspector of Police or equivalent is authorized to search, arrest and take further steps the aforesaid crime.

viii) The learned trial Court has to see whether the alleged recovery is from the exclusive and/or physical and constructive possession of the applicants or otherwise.

6. Keeping in view the peculiar facts of the instant case as well as a minimum punishment, which normally may be considered while dealing with the bail plea, therefore, I am of the view that scale inclines in favour of the applicants for grant of bail.

7. Because of the foregoing facts and circumstances of the case, prima facie, applicants have succeeded to bring their case within the purview of subsection (2) of section 497, CrPC., for this reason, applicants are admitted to post-arrest bail in crime No.69/2021 of Police Station A-Section Thull, District Jacobabad, registered for offenses under Sections 4, 8(I) of The Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, subject to furnishing their solvent surety in the sum of Rs.100,000/- (One Hundred Thousand only) each and P.R bonds in the like amount to the satisfaction of the learned trial Court.

8. Needless to mention here that any observation, if any made in this order is tentative and shall not prejudice the case of either party in the trial. It is made clear that in case if during proceedings the applicants misuse the bail, then the trial Court would be competent to cancel the bail of the applicants without making any reference to this Court.

9. These are the reasons for my short order dated 05.07.2021, whereby the applicants were enlarged on post-arrest bail in the aforesaid crime No. 69/2021.

Judge