

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 625 of 2022

Applicant : Abdul Rehman s/o Akbar Khan, through
Mr. Bahri Kamal, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Additional Prosecutor General.

Date of hearing: 01.06.2022
Date of order : 01.06.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Abdul Rehman s/o Akbar Khan seeks post-arrest bail in Crime 131/2022 registered at P.S. SITE-A Karachi, under Section 23(1)(a), Sindh Arms Act, 2013 (**the Act**). His earlier application for the same relief bearing No. 1206/2022 was dismissed by the Court of IInd Additional Sessions Judge Karachi-West vide order, dated 17.03.2021.

2. As per F.I.R., on 26.02.2022, at about 0600 hours, at 1-D Bus Stop, S.I.T.E. Area, Karachi police party headed by ASI Muhammad Ali arrested the applicant on being found in possession of one unlicensed 30 bore pistol, for that he was booked in the aforesaid F.I.R.

3. After hearing the learned counsel for the applicant as well as Addl. P.G. and perusing the material available on record, it appears that police has misapplied section 23(1)(a) of the Act, as the “pistol” does not come within the definition of “firearm” or “ammunition” referred to in section 23(1)(a) of the Act, as defined under section 2(b) and 2(d) of the Act, respectively, but within the definition of “arms” as defined under section 2(c) of the Act, for that the punishment has been provided under section 24 of the Act with imprisonment for a term which may extend to 10 years and with fine.

4. It further appears that the applicant is confined in judicial custody for last more than three months and the prosecution has already submitted the challan against him; hence, his custody is no more required for investigation purpose. Under Section 24 of the Act, the punishment for possessing unlicensed arms may extend to 10 years. The discretion is; however, left open with the trial Court by the legislature either to award maximum punishment to the accused or to award lesser punishment keeping in view the surrounding circumstances commensurate with the nature of the case.

5. In the instant case, it is an admitted position that the police party apprehended the applicant from a bus stop, which is located in a thickly populated and commercial area, but police failed to make his search in presence of private mashirs and it has not been mentioned in F.I.R. if the arranging of private mashirs for the search of the applicant was not possible for any reason. It is also an admitted position that neither in the F.I.R. nor in the Charge-Sheet the Daily Diary Entry number has been mentioned under which the police party made departure from police station for patrolling, which is lapse on the part of the prosecution creating reasonable doubt about alleged recovery and authenticity of the police party's departure from police station has become fishy and thus made the case of prosecution of further inquiry. As per *Mashirnama of Arrest and Recovery*, words "CAL 30 MAUSER MADE IN CHINA BY NORINCO" were engraved, which fact is not mentioned in the F.I.R. as well as in the report of Forensic Division Sindh, Karachi; hence, it is yet to be determined if the same pistol, allegedly recovered from the possession of the applicant, was sent to Forensic Division which fact is also a lapse on the part of the prosecution creating reasonable doubt about recovery of alleged pistol from the possession of the applicant entitling him to the bail. No reason exists for keeping the applicant behind the bars, when sufficient illegalities and irregularities have appeared in the case of the prosecution, which have created doubt in the prosecution story; benefit of which

would go to applicant, who is in circumstances entitled to bail. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

6. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. In case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

CrI. Bail application stands disposed of.

JUDGE

Athar Zai