

IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.2377 of 2021

Applicant : Hayat Khan s/o Shah Gul, through
Mr. Shabbir Ahmed, advocate

Respondent : The State, through Mr. Faheem Hussain Panhwar,
Deputy Prosecutor General along with Inspector
Badar-ul-Islam of P.S. Peerabad

Date of hearing : 31.03.2022
Date of order : 31.03.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Hayat Khan s/o Shah Gul seeks post-arrest bail in Crime No.977/2021, registered at P.S. Peerabad, Karachi, under Section 23(1)(a), Sindh Arms Act, 2013 (**the Act**). His earlier application for the same relief bearing No. 6197/2021 was dismissed by the learned Additional Sessions Judge-I, Karachi-West (MCTC), vide order, dated 08.12.2021.

2. As per F.I.R., on 02.11.2021 at about 2130 hours at near Shahzad Cinema, main Manghopir Road, Karachi the applicant was arrested by a police party headed by S.I.P. Ali Nawaz of P.S. Peerabad, Karachi on being found in possession of two unlicensed 30 bore loaded pistols, for that he was booked in the aforesaid F.I.R.

3. After hearing the learned counsel for the applicant as well as D.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 four 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 on suspicion at near Shahzad Cinema, 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 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. 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