

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S-1043 of 2022

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

1. For orders on office objections.
2. For hearing of main case.

28.10.2022.

Mr. Mazhar Iqbal, Advocate for applicant.
Ms. Sana Memon, Assistant P.G.

ORDER

Muhammad Saleem Jessar, J. - Through this application, applicant Ghulam Sarwar S/o Rehmatullah Brohi seeks his admission on post arrest bail in Crime No.136 of 2022, registered at Police Station Matli District Badin for offence under Section 08 of Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (Sindh Act No.III, 2020). Earlier, the bail plea raised by applicant before first forum has been declined by Court of learned Sessions Judge, Badin vide impugned order dated 17.09.2022 passed in Cr. Bail Application No.1449 of 2022.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by learned Sessions Judge, Badin; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. Learned counsel for applicant submits that punishment provided by law / Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2019 (herein after referred as Act, 2020) is three years hence, does not exceed limits of prohibitory clause of Section 497(i) C.P.C. Learned counsel submits that applicant is first offender, therefore, he deserves leniency of bail.

4. On the other hand, learned Assistant P.G appearing on behalf of State opposes bail application on the pretext that offence committed by applicant is against society; hence, he does not deserve any leniency / concession of bail. She further submits and admits that applicant is first offender and his case fell within the ambit of first proviso to Section 8 of Act and does not exceed limits of prohibitory clause of Section 497 Cr.P.C.

Further admits that police file is also silent whether the applicant had indulged in identical crime prior to this one or otherwise.

5. Heard learned Counsel for respective parties and have gone through the record available before me as well as perused the Act, 2020.

6. It appears that applicant is shown to have in possession of raw mainpuri / Gutka powder, which he allegedly was transporting and subsequently was intercepted and apprehended by police. The allegation leveled by prosecution in the FIR falls within the definition of Sections 3, 4, 5, 6 and 7 of the Act, 2020, which are punishable under Section 08 of the Act, 2020. For sake of convenience, it will be appropriate to reproduce the Section 08 of said Act which reads as under:-

“8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lacs (two hundred thousand) rupees.

(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees”.

7. Since the applicant is first offender and is not a previous convict, therefore, his case purely falls under Section 8(i) of the Act, 2020 and does not fall under second proviso to Section 08 of the Act, 2020. Prima facie, the punishment under Section 8(i) as provided by law / Act, 2020, is three (03) years which does not exceed limits of prohibitory clause of Section 497 Cr.P.C. In such like cases, grant of bail is a rule and refusal will be an exception. In this regard, reliance can be placed upon the cases of TARIQUE BASHIR & 05 others v. The STATE (PLD 1995 SC page 34) & MUHAMMAD TANVIR and another v. The State (PLD 2017 SC page 733).

8. In view of the above legal position, I am of the opinion that applicant has successfully made out his good *prima facie* case of further inquiry as envisaged under sub-section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, the applicant is admitted to bail subject to his furnishing

solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and PR bond in the like amount to the satisfaction of learned trial Court.

9. It is pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Shahid