

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. D- 99 of 2022

(Aijaz and another v. The State)

Before:

**Mr. Justice Zafar Ahmed Rajput &
Mr. Justice Irshad Ali Shah.**

For the Applicants : Applicants Aijaz s/o Naseer and 2. Mitha Khan alias Mitho s/o Naseer through M/s Achar Khan Gabol and Abdul Wahab G. Shaikh, Advocates.

For the State : Mr. Aftab Ahmed Shar Additional P.G.

Date(s) of Hearing : 21-02-2023
Date of Order : 21-02-2023

ORDER

Zafar Ahmed Rajput, J. - Having been rejected their Crl. Post Arrest Bail Application No. 22 of 2022 filed in Special Case No.29 of 2022 by learned Judge, ATC, Kharipur vide order dated 28.10.2022, the applicants Aijaz and Mitha Khan alias Mitho both sons of Naseer, through this Crl. Bail Application, seek same concession in Crime No. 17 of 2022 registered at P.S, CTD, Sukkur under Sections 4/5 Explosive Act, 1908, 7 ATA, 1997 read with Section 34 PPC.

2. It is case of the prosecution that on 06.09.2022, a police party headed by complainant ASI Abid Hussain Qureshi of P.S, CTD, Sukkur apprehended applicants at Lanishan, old National Highway Hussainabad, Khairpur and recovered ten detonators, nut bolts, ball barrings and nails weighing 300 grams from applicant Aijaz and from applicant Mitha Khan alias Mitho, police secured five detonators, for that they were booked in the aforesaid FIR.

3. After hearing learned counsel for the applicants, learned counsel for the complainant as well as learned APG and perusing the material available on record, it appears that the alleged detonators were non-electric without safety

fuse. It further appears that despite having prior information, the police failed to associate any private Mashir to witness the alleged recovery. Nothing has been brought on record to establish that the applicants have been found connected with any militant group in any manner. The facts of the FIR suggest that the alleged offence at the most falls under Section 4 (b) of the Act, 1908, which provides minimum punishment of seven years. It is settled principle of law that while deciding bail application, lesser punishment provided under the statutes shall be considered, hence alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C. Moreover, it is yet to be seen that the alleged detonators without safety fuse were having characteristic of explosive substance, as defined under Section 2 of the Act, 1908. Hence, guilt of the applicants requires further enquiry, as envisaged sub-section (2) of Section 497 Cr.P.C entitling the applicants for the grant of post-arrest bail.

4. In view of the foregoing facts and circumstances of the case, the applicants are admitted to post arrest bail subject to their furnishing solvent surety in the sum of **Rs.100,000/-(One Lac)** each with P.R bond in the like amount to the satisfaction of the trial Court.

5. Needless to mention here that the observations made herein-above are tentative in nature and would not influence the trial Court while deciding the case of applicants on merits and if the applicants in any manner try to misuse the concession of bail, it would be open for the trial Court to cancel the same after issuing them the requisite notice.

6. The instant Crl. Bail Application stands **allowed** in above terms.

JUDGE

JUDGE

Ahmad