

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Bail Application No. S-49 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on office objection at flag-A
2. For hearing of Bail Application

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13.02.2023

Mr. Ali Akbar Narejo, Advocate for the applicant.
Mr. Syed Sardar Ali Shah, Additional P.G for the State.

ORDER

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ZAFAR AHMED RAJPUT, J:- Having been rejected his earlier criminal post-arrest bail application bearing No. 2788 of 2022 by the learned Additional Sessions Judge-IV, Khairpur, vide order dated 05.01.2023, applicant/accused Manthar Ali s/o Wazeer Ali seeks same concession through instant criminal bail application in Crime No. 327 of 2022, registered at Police Station "B"-Section, Khairpur under section 23 (1) (a) of Sindh Arms Act, 2013 (**"the Act"**).

2. As per FIR, on 13.12.2022 at 1817 hrs., the applicant was arrested in Crime No. 326 of 2022, registered under sections 324, 353, 398, 401, P.P.C. He was also booked in present FIR on being recovered from his possession one unlicensed 30-bore T.T. pistol along with magazine; for that, ASI Ghulam Muhammad Maitlo lodged the aforesaid FIR on behalf of the State.

3. After hearing the learned counsel for the applicant, learned A.P.G. and perusing the material available on record with their assistance, it reflects that the applicant is confined in judicial custody since day of his arrest and his custody is no more required by the police for further investigation. As per facts of Crime No. 326 of 2022, the applicant and co-accused, namely, Abdul Rasheed and Sanaullah, duly armed with deadly weapons, were standing at Pir Mangio Link Road with an intention to commit a crime, who on seeing police party

coming made straight fire upon them with intention to commit their *Qatil-e-Amd*. The police party arrested the applicant at the spot and recovered one unlicensed 30-bore T.T. pistol along with magazine from the possession of the applicant, while co-accused succeeded to make their escape good. The applicant has already been admitted to post-arrest bail in aforesaid Crime No. 326 of 2022 by this Court.

4. In the instant case, it appears that police has misapplied the 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 and 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. 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. It also appears that the police despite having prior information about the availability of the applicant at the place of incident, failed to associate any private *mashir* to witness the alleged encounter and recovery of the pistol from the possession of the applicant, which is a lapse on the part of the prosecution creating reasonable doubt about recovery of alleged revolver from the possession of the applicant entitling him to the 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/accused on merits. In case applicant/accused in any manner tries to misuse the concession of bail, it would be open for the trial Court to cancel his bail after issuing him the requisite notice.

JUDGE

Ahmed