

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Bail Application No.S-312 of 2023
Criminal Bail Application No.S-313 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>19.04.2023</u>	For orders on office objection. For hearing of main case.
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Mr. K.B. Lutuf Ali Leghari advocate for applicants.

Ms. Rameshan Oad, Assistant Prosecutor General.

Amjad Ali Sahito, J:- Through instant bail applications, the applicant/accused namely, Wajid Ali seeks post-arrest bail in crime No.12/2023 registered at PS Kotri, Jamshoro for the offence under section 08 of Mainpuri & Gutka Act-2019 and crime Nos.13/2023 registered at same PS Kotri, Jamshoro for the offence under section 9 (c) of CNS Act, 1997 with Amendment Act, 2022. Earlier, the bail pleas of the applicant/accused were declined by the learned Additional Sessions Judge-II, Kotri through separate orders dated 09.03.2023.

2. The details and particulars of the FIRs are already available in the bail applications and FIR, same could be gathered from the copy of FIRs attached with such applications, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly argued that the applicant/accused is innocent, he was not arrested on spot but has falsely been implicated in these cases; that the entire prosecution story narrated in the FIRs is false, fabricated and concocted and is without independent or corroborative piece of evidence; that in fact, the factory stated in the prosecution story was rented out by its owner Muhammad Saleem to one Rizwan and thereafter the applicant/accused was booked in the offenses on the information otherwise, no source of information is disclosed by the police. He further contended that the applicant/accused is not previous

convict; he is no more required for further investigation. He has further contended that co-accused namely, Muhammad Mustaqeem alias Saqlain, Muhammad Haroon and Muhammad Asif who have been booked in the same crimes on the basis of information have been admitted to bail by this Court vide order dated 17.04.2023 passed in Criminal Bail Applications No.127, 128, 195 and 196 of 2023. Learned counsel while placing on record the copy of said order contended that the case of applicant/accused is on better footings to that of co-accused who have been admitted to bail, as such, rule of consistency is very much applicable to the case of present applicant/accused. He, therefore, prayed for grant of post-arrest bail of the applicant/accused.

4. On the other hand, learned A.P.G. has opposed the bail plea of the applicant/accused and prayed for dismissal of instant bail applications. However, she has admitted that said co-accused were granted bail who are nominated in the FIR on the basis of information and CDR data supported the version of prosecution.

5. Heard and perused record.

6. Admittedly, the applicant was not arrested at the spot even he was not nominated in the FIR but allegedly the police has subsequently involved him on the basis of information otherwise, no evidence has been collected by the Investigating Officer. Perusal of order dated 17.04.2023 passed in Criminal Bail Applications No.127, 128, 195 and 196 of 2023 shows that co-accused namely, Muhammad Mustaqeem alias Saqlain, Muhammad Haroon and Muhammad Asif who are also involved in the same crimes on the basis of information have been admitted to bail by this Court. During hearing of said bail applications, Investigating Officer of the case was present in Court and admitted that the factory was rented out by accused Muhammad Saleem to absconder accused Rizwan. He also admitted that on the basis of *prima facie* no evidence during investigation, said co-accused were exonerated from the offence and such recommendations were made for disposal of the case against them under 'C' class; however, learned Magistrate did not agree and taken cognizance of the offence against them. While deciding bail plea of the

accused, only tentative assessment is to be made. *Prima facie*, the case of applicant/accused is on better footings to that of aforesaid co-accused, who have been admitted to bail, as such, rule of consistency is very much applicable to the case of present applicant/accused. So far involving the applicant/accused on the basis of information/CDR DATA is concerned, mere such aspect cannot be considered/used as evidence worth reliance; however, first it is the learned trial Court to record evidence of prosecution witnesses to conclude relevancy / applicability of the same. In view of above, applicant has made out the cases for further inquiry in view of subsection (2) of section 497, Cr.P.C. Consequently, applicant/accused is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.100,000.00 (Rupees one hundred thousand only) and PR bond in the like amount in each case/crime, to the satisfaction of learned trial Court.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the cases of the applicants on merits.

8. Office is directed to communicate copy of this order to learned trial Court over fax today.

JUDGE

Abdullah Channa/PS