ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2689 of 2023

Date	Order with signature of Judge

For hearing of Bail Application.

11.12.2023

Mr. Sajjad Ahmed, Advocate for the Applicant.
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.

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Through this bail application under Section 497 Cr.P.C., the applicant Bismillah Khan has sought admission to post-arrest bail in F.I.R No. 545/2022, registered under Section 23(i) A Sindh Arms Act 2013 at Police Station Gulistan-e-Jauhar, Karachi.

2. Brief facts of the prosecution case are that the accused was arrested in FIR No. 545/2022, registered under Section 23(i) A Sindh Arms Act 2013, having in his possession 30 bore pistol and with magazines, for which the applicant/accused could not produce any valid license, subsequent thereto, the FIR of the incident was registered by the complainant and the matter was subsequently challaned on 14.07.2022. The Trial Court dismissed the bail plea of the applicant on the ground that the applicant was granted bail he misused the concession of bail and remained absent from March 2023 up to 26.10.2023 as such he breached his bail bond as well as misused the concession of bail.

3. Learned counsel for the applicant has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case by the complainant in connivance with police; that the applicant/accused has nothing to do with the alleged offense, hence his false implication cannot be ruled out. He next argued that the place of the alleged incident is a highly thickly populated area, but the police/complainant has failed to arrange any single independent eye witness of the alleged incident; and that nothing was recovered from the possession of the applicant/accused. He further submitted that the case of the applicant is not based on the misuse of the concession bail rather he applied for a fresh bail application after his arrest, as such the finding of the learned Trial Court is erroneous therefore the recording of the evidence by the trial Court will not come in the way of the applicant.

4. Learned Addl. P.G submits that on 16.08.2022 applicant was present on bail and remained absent from 27.04.2022 till 25.09.2023 and his bail was canceled and surety was forfeited vide order dated 06.07.2023, however, he again appeared before the learned Trail Court on 30.10.2023 for grant of post-arrest bail which was dismissed vide order dated 02.11.2023. He further submitted that the two witnesses namely Qadir Bux and HC Bahadur Ali were examined and the remaining witnesses appeared for evidence but on account of the absence of the applicant, the matter could not be concluded. He prayed for the dismissal of this Criminal Bail Application.

5. I have heard the learned counsel for the applicant / accused and the learned Additional Prosecutor General Sindh for the State, and have also gone through the record. In a recent case; namely, *Ayaz Ali V/S The State*, ***PLD 2014 Sindh 282***, after examining and comparing Sections 23(1)(a) and 24 of the Act, it was held by a learned single Judge of this Court that Sub-Section 1(a) of Section 23 of the Act deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act (i.e. 'license for acquisition and possession of firearms and ammunition'); and whereas, Section 24 of the Act provides punishment for possessing arms or ammunition, licensed or unlicensed, to use the same for any unlawful purpose. It was further held that since a maximum punishment of up to 14 years is provided in Section 23(1)(a) and Section 24 provides a punishment of up to 10 years, the maximum punishment in the case of recovery of a pistol, which falls within the definition of "arms" in terms of Section 2 of the Act, will be 10 years under Section 24 of the Act. It was also held that the question of the quantum of punishment has to be determined by the trial Court as to whether the accused would be liable to maximum punishment or not, and in case of his conviction, whether his case would fall under the prohibitory clause or not. It was observed in the cited case that all the witnesses were admittedly police officials, and the accused was no more required for further investigation. Because of the above observations and findings, it was held *inter alia* that the case was that of further inquiry, and accordingly, bail was granted.

6. In a more recent case ; namely, Criminal Bail Application No.1010/2014 (*Muhammad Shafique V/S The State*) decided on 11.07.2014, wherein it has been observed that the terms "arms" and "firearms" have been separately and distinctly defined in Clauses (c) and (d), respectively, of Section 2 of the Act; amongst many other articles designed as weapons of offence or defence, "pistols" are included in the definition of "arms" in Clause (c) *ibid* and not in the definition of

"firearms" defined in Clause (d) *ibid* ; the punishment and penalty for acquiring, possessing, carrying or controlling any "firearm" or ammunition in infringement of Section 3 of the Act, is provided in Section 23(1)(a) of the Act, which is imprisonment for a term which may extend to 14 years and with fine ; and, whereas, the punishment for possessing "arms" or ammunition, licensed or unlicensed, with the aim to use them for any unlawful purpose etc., is provided in Section 24 of the Act, which is imprisonment for a term which may extend to 10 years and with a fine. This court held in the aforementioned case that the above clearly shows the intention of the legislature that not only are the offenses to "arms" and those relating to "firearms" to be dealt with separately as provided in the Act; but since punishments having different terms in respect of "arms" and "firearms" have been specified separately in the Act, punishment under Section 23(1)(a) of the Act cannot be awarded for an offense committed under Section 24 of the Act, and vice versa.

7. As observed above, amongst many other articles designed as weapons of offense or defense, "pistols" are included in the definition of "arms" in Clause (c) *ibid* and not in the definition of "firearms" defined in Clause (d) *ibid*.

8. Adverting to the facts of the present case, the prosecution has alleged that 30-bore pistol was recovered from the applicant, but he was booked and has been challaned under Section 23(1)(a) of the Act, which applies to "firearm or ammunition" and not to "arms". It will be for the trial Court to decide whether the provisions of Section 23(1)(a) *ibid* will apply to the applicant's case or not.

9. It is an admitted position that all the witnesses are police officers and no attempt was made by them to search for independent witness(s) although the applicant was arrested on 20.06.2022; and, the place of arrest had been shown as Safdar Chowk, Block 10, Gulistan-e-Jauhar Karachi which is populated area, however, this factum requires further probe into the matter. Even the F.I.R. does not suggest that the police officials first tried to search for independent witness(s), but when no such witness was found, only then did they search the applicant and prepare the memo of arrest and alleged recovery was made from him.

10. Since the investigation has been completed and the challan has been submitted before the trial Court, even though the charge has been framed, some of the witnesses have already been examined by the Trial Court and the case is on the verge of conclusion as per the report submitted by the learned Trial Court.

11. In such circumstances, there is no possibility of tampering in the case of the prosecution by the applicant. The guilt or innocence of the applicant is yet to

be established as it would depend on the strength and quality of the evidence that will be produced by the prosecution and the defense at the time of the trial; and, the trial Court shall have to decide whether the case of the applicant falls within the ambit of Section 23(1)(a) of the Act or not.

12. In view of the above discussion, this is a case that requires further inquiry, in my humble opinion, and I am convinced that the applicant has made a case for the grant of post-arrest bail, as the Trial Court has dismissed the bail application based on the analogy as contained in Section 497 (5) Cr. P.C, though the applicant had filed the bail application afresh under Section 497 Cr.P.C., no prejudice shall be caused to either party if the applicant is granted post-arrest bail to face the trial and cross-examine the remaining witnesses to avoid further loss of time in conclusion of the case. It is well settled now, that principles governing the grant of bail and the cancellation of bail substantially stand on different footings and there is no compulsion for canceling the bail unless the bail granted order is patently illegal, erroneous, factually incorrect, and has resulted in miscarriage of justice or where accused is found to be misusing the concession of bail by extending threats or tempering with the prosecution case. Courts have always been slow to cancel bail already granted, as the liberty of a person cannot be curtailed on flimsy grounds. The grounds for cancellation of bail are *pari materia* with the principles that apply to setting aside the order of acquittal. Once bail is granted by a Court of competent jurisdiction, then strong and exceptional grounds would be required for cancellation thereof.

13. For the foregoing reasons this bail application is allowed and the applicant is admitted to post-arrest bail in Crime No. 545 of 2022 under Section 23(1)A SAA 2013, of P.S Gulistan-e-Jauhar, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand only) and P.R. Bond in the like amount to the satisfaction of the trial Court.

14. The applicant is directed to attend the trial Court in case he fails to put his appearance on any date of hearing at the Trial. The learned Trial Court shall be at liberty to cancel his bail in terms of Section 497(5) Cr. P.C without reference to this Court.

15. The observation recorded herein above is tentative.

J U D G E

Zulfiqar/P.A