ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1280 of 2023

Date	Order with signature of Judge

1. For order on office objection at 'A'
2. For hearing of bail application

07.8.2023

Mr. Nisar Ahmed Narejo advocate alongwith Mr. Muhammad Ramzan advocate for the applicant/accused
Mr. Muntazir Mehdi, Additional PG alongwith ASI Aziz-ur-Rehman PS Bin Qasim Karachi

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Through this criminal bail application, applicant seeks post-arrest bail in Crime No.184/2023 registered under Section 23(i) A of the Sindh Arms Act, 2013 at PS Bin Qasim Karachi after his bail plea has been declined by learned III-Assistant Sessions Judge Malir Karachi vide order dated 10.6.2023.

2. Brief facts of the prosecution case are that the accused was arrested in Crime No.183/2023 under Sections 392/397/34 PPC of police station Bin Qasim Karachi, having in in his possession one 30 bore pistol loaded with magazine having two live rounds, for which the applicant/accused could not produce any valid license, subsequent thereto, the FIR of the incident was registered by the complainant.

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; that facts are that on 20.5.2023 the police forcibly took away the applicant/accused from Gharo District Thatta and later on booked him in this false case, in this regard Ghulam Rasool brother of accused moved an application to the SHO of PS Gharo for release of the applicant/accused. 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; that nothing was recovered from the possession of the applicant/accused. He, therefore, prayed for allowing the instant bail application.

4. Learned Additional PG has strongly opposed the grant of bail to the applicant/accused on the ground that the applicant/accused is nominated in the FIR he has been arrested red-handed at the spot and

recovery has also been affected. He contended that the allegation made by the applicant against the police officials of foisting a false case is baseless as no enmity with the police officials or malafides on their part has been alleged by the applicant. Regarding the absence of independent witnesses, he contended that bail cannot be granted on this ground. It was urged that the offense committed by the applicant falls within the prohibitory clause of Section 497 Cr.P.C. as Section 23(1)(a) of the Act provides a maximum punishment of 14 years and a fine.

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 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 one 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 at about 2:45 p.m. and the place of arrest had been shown as forest and the applicant/accused was allegedly in injured condition, therefore, it is yet to be ascertained by the trial Court whether he received injury at the hands of his accomplice or police and how he managed to escape from the place of incident in presence of police and complainant. This factum requires further probe in the matter. Even the F.I.R. does not even suggest that the police officials first tried to search for independent witness(s), but when no such witness was found, only then they searched the applicant and prepared the memo of arrest and alleged recovery from him, besides no identification parade had taken place.

10. Since the investigation has been completed and the challan has been submitted before the trial Court, the applicant will not be required for any further investigation. 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.

11. 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 out a case for the grant of bail.

12. For the foregoing reasons this bail application is allowed and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) and a P.R. Bond in the like amount to the satisfaction of the trial Court.

13. It is hereby clarified that the observations made and the findings contained herein shall not prejudice the case of any of the parties, and the trial Court shall proceed to decide the case on merits strictly under the law.

JUDGE

Zahid/*