

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-779 of 2023

Applicants: Rehmatullah Son of Khan Muhammad Brohi and Saddiq Ali Son of Hazar Khan Brohi, through Mr. Zafar Ali Laghari, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh along-with SIP Imam Ali Bhangwar.

Date of hearing: **18.08.2023**

Date of Order: **18.08.2023**

### O R D E R

**ZULFIQAR ALI SANGI, J:-** Applicants Rehmatullah and Saddiq Ali seek post arrest bail in Crime No. 46 of 2023 registered under section 8 (i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manipuri Act 2019 at P.S Dasoori District Tando Allahyar. Earlier their application seeking same relief was dismissed by learned Sessions Judge, Tando Allahyar vide order dated 20.07.2023.

2. Brief facts of the aforementioned F.I.R. registered against the applicants by the A.S.I of P.S. Dasoori are that on 12.07.2023 a police party during patrol duty received a tip-off in respect of applicant No.2 Saddiq Ali that he would transport Indian origina Safina Gutka whereupon they intercepted pointed Car bearing No.BXX-143 from Tando-Adam Mirpurkhas Road. On checking the said car, the complainant recovered seven bags from rear seat while eight bags of Indian Safina Gutka from its diggi, in all 735, each packet containing 110 Indian Safina Gutka sachets, totaling 80835 puries injurious to human lives, hence this F.I.R was registered.

3. Learned counsel for the applicants has contended that though the alleged place of incident is populated area but no private person was associated by the complainant to witness the alleged recovery proceedings; that the applicants are nothing to do with the alleged recovery and same has been foisted upon them; that the applicants are in custody since last one month without effective progress in their trial. Lastly he submits that the offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, prays that applicants may be enlarged on post arrest bail.

4. Learned Assistant Prosecutor General, Sindh for the State has strongly opposed the grant of bail to the applicants by contending that allegedly applicants through their car were transporting huge quantity of contraband substance which is injurious to human lives and the offence with which they have been charged is effecting the society at large, therefore, they are not entitled for grant of bail and their bail application may be dismissed.

5. I have heard the learned counsel for the applicants as well as the learned Assistant Prosecutor General, Sindh and have also gone through the material available on the record with their able assistance.

6. Perusal of section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manipuri Act 2019 reflects that its punishment is upto three (03) years but shall not less than 01 year and fine of rupees two lacs. It is settled by now that while deciding the question of bail lesser sentence is to be considered. In ***Shehzore and another's case 2006 YLR 3167*** while considering the lesser sentence of the offence this Court granted bail to the accused. As has been discussed above in respect of the punishment provided for the alleged offence for which the applicants are charged, the same provided maximum punishment up to three (03) years which even does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in these cases is right while refusal is an exception as has been held by Honourable Supreme Court of Pakistan in cases of ***Tarique Bashir V. State (PLD 1995 SC 34)***, ***Zafar Iqbal V. Muhammad Anwar and others (2009 SCMR 1488)***, ***Muhammad Tanveer V. State (PLD 2017 SC 733)*** and ***Shaikh Abdul Rehman V. The State etc. (2021 SCMR 822)***.

7. The Honourable Supreme Court in case of ***Muhammad Imran V. The State and others (PLD 2021 SC 903)*** has formulated the grounds for the case to fall within the exception meriting denial of bail as (a) the likelihood of the petitioner's abscondence to escape trial; (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or (c) his repeating the offence keeping in view of his previous criminal record or the desperate manner in which he has prima facie acted in the commission of offence alleged. Further Honourable Supreme Court held in the said order that the prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record. In the case in hand the prosecution has failed to establish any of the above ground meriting denial of the application of the applicants. It is also settled by the Honourable Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on the record.

8. From the tentative assessment of the record the applicants have made out their case for grant of bail. Resultantly, this application is allowed and the applicants are granted bail subject to furnishing their solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) each and P.R bonds in the like amount to the satisfaction of the Trial Court.

9. The bail application stands disposed of in the above terms.

^ JUDGE