

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

Criminal Bail Application No.S-1017 of 2023

02.10.2023

Mr. Ahsan Gul Dahri, advocate for applicant along with applicant present on interim pre-arrest bail.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

ORDER

ZULFIQAR ALI SANGI, J:- This order will dispose of instant bail application filed on behalf of the applicant namely, Zulfiqar Ali s/o Dur Muhammad, seeking his pre-arrest bail, who is facing trial in Crime No.93/2023 of PS Bhitai Nagar, Hyderabad, registered under section 08 of SPPMSSUGM Act, 2019. Earlier, his bail plea was turned down by learned Criminal Trial Court-II/Additional Sessions Judge-IV, Hyderabad vide order dated 28.08.2023.

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

3. Learned counsel for the applicant contends that the applicant has been booked in the instant case falsely with the allegation that he and unknown persons escaped away from the place of scene and police recovered ten bags of raw material for preparation of gultka containing 15 / 15 kilograms in each bag; that though the alleged place of incident is busy road but no private person was associated by the complainant to witness the alleged recovery proceedings; that the applicant has nothing to do with the alleged recovery and same has been foisted upon him. Lastly, he submits that the offence does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, prays that the interim pre-arrest bail of the applicant may be confirmed.

2. Learned Assistant Prosecutor General, Sindh for the State strongly opposes the grant of bail to the applicant by contending that allegedly applicant along with an unknown culprit through vehicle was transporting huge quantity of contraband substance which is injurious to human lives, therefore, he is not entitled for grant of bail and his bail application may be dismissed.

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

4. 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 Shahmor's case 2006 YLR 3167 while considering the lesser sentence of the offence this Court granted bail to the accused. Grant of bail in these cases is right while refusal is an exception as has been held by the Honourable Supreme Court of Pakistan in cases of Tarique Bashir V. State (PLD 1995 SC 34), ZafarIqbal V. Muhammad Anwar (2009 SCMR 1488), Muhammad Tanveer V. State (PLD 2017 SC 733) and Shaikh Abdul Rehman V. The State etc. (2021 SCMR 822).

5. 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 applicant. 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. As regards recovery of the contraband material effected from the Car from which the applicant and unknown escaped away, could only be determined by the learned trial Court after recording evidence of prosecution witnesses; however, only the bail plea is to be decided tentatively.

4. From the tentative assessment of the record the applicant has made out their case for grant of bail. Resultantly, this application is **allowed** and the interim pre-arrest granted to the applicant vide order dated 18.09.2023 is hereby confirmed on the same terms and conditions.

5. The observations made hereinabove are tentative in nature and will not prejudice the case of either party.

JUDGE