

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2064 of 2023

Date	Order with signature of Judge
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1. For order on office objection at 'A'
2. For hearing of bail application

02.10.2023

Mr. Zafar ali Sipyo advocate for the applicant
Mr. Zahoor Shah, Additional PG alongwith SI Yar Muhammad of PS
Kalakot Karachi

Through this criminal bail application, the applicant seeks post-arrest bail in F.I.R No.222/2023 registered under Section 23(i) A of the Sindh Arms Act, 2013 at PS Kalakot Karachi.

2. Brief facts of the prosecution case are that the accused was arrested in Crime No.222/2023 under Sections 23(i) A of the Sindh Arms Act, 2013 at PS Kalakot Karachi, having 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. His earlier bail plea has been declined by learned Vth Additional Sessions Judge South Karachi vide order dated 24.8.2023 on the premise that no challan was submitted in the case. Per learned counsel, the challan of the case was submitted before the concerned court on 1.9.2023.

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 police; and 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 complainant/ ASI Qaiser Mehmood 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, 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 was caught red-handed at the spot and recovery of one 30-bore pistol loaded with magazine having two live rounds has been affected from him. 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.

6. After examining and comparing Sections 23(1)(a) and 24 of the Act, 2013, prima-facie, it appears 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.

7. 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. 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 and whether the pistol is included in the definition of arms in Clause (c) *ibid* or in the definition of firearms as 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 from a public place. 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 from him.

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 as discussed supra.

11. In view of the above, the applicant has made 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 within one month positively.

JUDGE