

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.775 of 2024

Date	Order with signature of Judge
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For hearing of bail application

For hearing and Order:-04.07.2024

Mr. Muhammad Akbar Awan advocate for the applicant / accused
Mr. Muntazir Mehdi, Additional PG

ORDER

Adnan-ul-Karim Memon, J:- Through this criminal bail application, applicant Haris Maqsood seeks post-arrest bail in Crime No.91/2024 registered under Section 23(i) A of the Sindh Arms Act, 2013 at PS Ferozabad Karachi after his bail plea has been declined by learned Xth Additional District & Sessions Judge East Karachi vide order dated 04.03.2024 in Cr. Bail Application No. 958 of 2024 on the premise that recovery of firearms has been made from the applicant which is not an ordinary offense as there is no ill motive on the part of prosecution to book the applicant.

2. Brief facts of the prosecution case are that the accused was arrested in Crime No.91/2024 under Sections 23(i) A of the Sindh Arms Act, 2013 by Ferozabad police station Karachi, having been found in possession of one 9mm pistol having four live rounds and three magazines with three live bullets, for which the applicant/accused could not produce any valid license, subsequent thereto, the FIR of the incident was registered by the Head Constable Asif Hussain of PS Brigade.

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; that nothing was recovered from the possession of the applicant/accused and the alleged recovery of a 9mm Pistol has been foisted upon him as the police officials demanded illegal gratification and due to refusal violated the provisions of law whereas all the recovery has been shown in the presence of police officials; that no independent witness has been associated, which is a clear violation of Section 103 Cr.P.C. He has further submitted that the alleged recovered weapon was not sent to a ballistic expert for examination, in such circumstances the case of the applicant/accused requires further inquiry. 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. Besides he has misused the concession of bail granted by the trial court at the initial stage. He lastly prayed for the dismissal of the instant 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, 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 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* ; 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 that 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 32-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 has in his possession one 32-bore pistol having three 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. 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 they searched the applicant and prepare the memo of arrest and alleged recovery from him, besides no identification parade had taken place.

10. Since the investigation has been completed the challan has been submitted before the trial Court, and the charge has been framed, the trial Court has to decide whether the case of the applicant falls within the ambit

of Section 23(1)(a) of the Act or not. In such circumstances, the Trial Court is directed to conclude the trial within one month positively.

11. 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 P.R. Bond in the like amount to the satisfaction of the trial Court.

12. 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

Shafi