

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-861 of 2024

| DATE | ORDER WITH SIGNATURE OF JUDGE |
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For orders on office objection
For hearing of main case

15.08.2024

Mr. Muhammad Shafique Khan advocate for applicant.
Ms. Rameshan Oad, A.P.G.

ZULFIQAR ALI SANGI, J: Through this bail application, the applicant Aanand seeks his post arrest bail in Crime No.89 of 2024, registered at PS Airport Nawabshah, for offence under section 4, 5, 8 Sindh Mainpuri Ghutka Act, 2019.

2. Brief facts of the case are that 12.05.2024 at 2000 hours complainant being posted at police station Airport Nawabshah was on patrolling along with his subordinate staff in the area, when reached at Lal Building Chowk he received information that Gutka Mainpuri seller namely Kashif @ Pappi Sheikh and Muhammad Asif @ Kaka Sheikh together with their companions in their go-down situated at Muhallah Essarpura Nawabshah are making the substance Mainpuri Ghutka Mawa for selling in the city. He reached at the pointed place, arrested the applicant and secured from there Tobacco, chemical etc. as detailed in FIR and registered such FIR against applicant and co-accused.

3. Learned counsel for the applicant, at the very outset, submits that the applicant being innocent has been involved by the police with malafide intention; that all the witnesses are police officials and are sub-ordinate to the complainant; that despite spy information, no private mashir was associated in the recovery proceedings; that alleged articles were foisted upon the applicant and nothing was recovered from his physical

possession; that section 8 of the Ghutka and Mainpuri Act, 2019 is punishable up to three years, hence the same does not fall within the prohibitory clause of section 497 Cr.P.C, therefore, the applicant is entitled for grant of bail.

4. On the other hand, learned A.P.G opposed the grant of bail to the applicant on the ground of recovery of huge quantity.

5. I have heard learned counsel for the applicant as well as APG for the State and have gone through the material available on record with their able assistance.

6. Record reflects that alleged recovery was affected from the populated area but no private person was associates as witness in the proceedings nor the complainant tried despite spy information. All the witnesses are police officials and subordinate to the complainant, therefore, there is no apprehension of tempering with the evidence. The investigation of case is completed and the challan has already been submitted before the court having jurisdiction, as such, the custody of applicant is no more required for further investigation by the police.

7. Since the section 8 ibid is provided punishment upto three years, which does not come within the ambit of section 497, Cr.P.C. It is settled law 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. As has been discussed above in respect of the punishment provided for the alleged offence for which the applicant is charged, the same provided maximum punishment up to 03 years which even does not fall within the prohibitory clause of section 497 Cr.P.C and grant of bail in these case 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 (2009 SCMR 1488)**, **Muhammad**

Tanveer V. State (PLD 2017 SC 733) and Shaikh Abdul Raheem V. The State etc (2021 SCMR 822).

8. The Honourable Supreme Court in case of *Muhammad Imran v. The State* (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 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.

9. From the tentative assessment of the record, I am of the view that the applicant has made out his case for further inquiry. Resultantly, this application is allowed and the applicant is granted bail subject to his furnishing solvent surety in the sum of Rs: 50,000/= and PR bond in the like amount to the satisfaction of learned trial Court.

10. The observations made herein above are tentative in nature and shall not prejudice the case of either party at the time of trial.

JUDGE

Ali Haider