

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

Criminal Bail Application No.S-1141 of 2023

Applicant: Ali Akbar through Mr. Altamash Arab,  
advocate.

Respondent: The State through Ms. Rameshan  
Oad, APG Sindh along-with Inspector  
Imtiaz Ali Nizamani P.S Taluka Tando  
Muhammad Khan and Inspector  
Imran Rasheed.

Date of hearing: 11.12.2023  
Date of decision: 18.12.2023

**ORDER**

**KHADIM HUSSAIN TUNIO, J.** Through captioned bail application, the applicant Ali Akbar seeks confirmation of pre-arrest bail granted to him vide order dated 19.10.2023 in FIR No. 54/2022 registered with Police Station Taluka Tando Muhammad Khan, u/s 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri (Amendment) Act 2021.

2. The sole allegation against the applicant is that he is the owner of a factory which multiple police contingents from Hyderabad and Tando Muhammad Khan raided on the basis of spy information, leading to a police encounter and hour long standoff and at the end a large amount of material used for the processing and packaging of manpuri and betel nuts was recovered from the same factory.

3. Learned counsel for the applicant mainly contended that nothing was recovered from the possession of the applicant; that all the prosecution witnesses are sub-ordinates of the complainant and as such are interested; that the applicant is innocent and has been falsely implicated in the present case due to political rivalry; that the applicant was not even present at the place of the incident; that it appears illogical that an unarmed man escaped in the presence of multiple police contingents; that the police proceedings at the place of incident including mashirnamas were delayed by over two days.

4. Learned APG Sindh, on the other hand, submitted that no enmity has been proved against any of the prosecution witnesses and that there is ample evidence available on the record to prove that the applicant was present at the place of incident, actively participated in the encounter and then escaped.

5. Arguments were heard and the record was perused tentatively.

6. On the face of the record, it appears that nothing is available on the record to suggest the direct involvement of the applicant in the alleged encounter. His sons who were also ascribed similar roles to him i.e. of presence at the place of incident with firearms have been released on post-arrest bail by the Anti-Terrorism Court vide order dated 13.11.2023. The role ascribed to the applicant is that he was present at the time of the raid and was the one issuing directions to his companions of setting alight the material in the factory and of resisting the police contingents. He is charged under S. 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri (Amendment) Act 2021 which, for a first time offender, carries a three year punishment and any subsequent offence carries ten years of punishment. Suffice it to say that the applicant is, as prayed, an acclaimed businessman and an amputee. His involvement in the incident is something that requires further inquiry at trial given these circumstances and there is very little likelihood that he would abscond. Similarly, witness intimidation is out of question too because all the witnesses are police officials. It has also come on record that two nominated co-accused Shahbaz and Sahib Khan who were also nominated in the FIR were admitted to bail after it had been confirmed through school attendance sheet that they had been at school at the relevant time, as such casting serious doubt regarding the involvement of the applicant. Rule of consistency in matters involving bail is entrenched in Article 25 of the Constitution of Islamic Republic of Pakistan which speaks of equality before the law. To be entitled to the benefit of this equality before the law, an accused has to prove that he faces the same circumstances and is accused of similar actions as an

accused that has been afforded the benefit of bail where it stands proved, the entitlement of such an accused has no cavil. In the present case, as already observed, the applicant has been ascribed the same role as his sons; therefore rule of consistency is fully applicable. Reference if any needed, regarding the well-entrenched principle of rule of consistency, is made to the case of *Mst. Asiya v. The State* (2023 SCMR 383). Undoubtedly, co-accused have been granted post-arrest bail, however no purpose would be served if the applicant was refused pre-arrest bail merely on the pretext that the other co-accused were denied the same when later they were admitted to post-arrest bail. It was held by the Supreme Court in the case of *Shahzada Qaiser Arafat alias Qaiser v. The State* (PLD 2021 SC 708) that if one has a good case for release on post-arrest bail, they should not be refused pre-arrest bail. Moreover, the offence with which the applicant is charged does not fall within the prohibitory clause of S. 497 CrPC and bail in such cases is a rule whereas its refusal is an exception as has been categorically held in numerous pronouncements of the Supreme Court reported as *Zafar Nawaz v. The State* (2023 SCMR 1977), *Munawar Bibi v. The State* (2023 SCMR 1729), *Nazir Ahmed alias Bhaga v. The State* (2022 SCMR 1467) and *Muhammad Tanveer v. The State* (PLD 2017 SC 733) wherein it has been held that:-

"We are shocked and disturbed to observe that in case of this nature, not falling within the prohibitory contained in Section 497 Cr.P.C. invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly the accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation."

7. For what has been discussed above, the applicant has successfully made out his case for confirmation of pre-arrest bail which in turn is confirmed on the same terms and conditions.



8. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case.

Sd/-18/12/2023  
KHADIM HUSSAIN TUNIO  
JUDGE

CERTIFIED TO BE TRUE COPY  
15/11/2023  
ASSISTANT REGISTRAR

Cr. Bail Application No.S-1141/2023 No. 13777 Dt. 20/12/23

Copy forwarded for information & compliance in view of this  
Hon'ble Court's above said order, to:-

The Learned Sessions Judge, Tando Muhammad  
Khan.

15/11/2023  
ASSISTANT REGISTRAR  
HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.