

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Bail Appln. No. S- 453 of 2015.

Date of hearing	Order with signature of Judge
03.11.2015.	

1. For orders on office objections.
2. For hearing.

Mr. Ghulam Sarwar Abdullah Soomro, Advocate for applicant.
Mr. Munir Ahmed Abbasi, D.D.P.P.

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**Zafar Ahmed Rajput, J.-** After rejection of his earlier bail application vide Order dated 15.8.2015, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Mehar, District Dadu, in Crl. Bail Appln. No. 1224/2015, the applicant/ accused Wali Muhammad son of Nabi Bux Mazari has moved towards this Court seeking post arrest bail in Crime No.184/2015, registered under Section 24 of the Sindh Arms Act, 2013, at P.S Mehar, District Dadu.

2. Briefly stated facts of the prosecution case as narrated in the F.I.R, are that on 25.7.2015, the applicant/ accused was arrested in Crime No.183/2015, under Section 324, 353 P.P.C, registered at P.S Mehar, District Dadu and from his possession one un-licensed pistol bearing No.4340 of 30-bore was recovered with empty magazine.

3. I have heard learned counsel for the applicant and learned D.D.P.P appearing for the State and perused the material available on record.

4. The learned counsel for the applicant has mainly contended that the applicant/ accused is innocent and has falsely been implicated in this case. He has further contended that the alleged pistol has falsely been foisted upon the applicant/ accused by the police with malafide intention and he has also been implicated in another case bearing Crime No.183/2015, under Sections 324, 353 P.P.C, wherein not any member of the police party

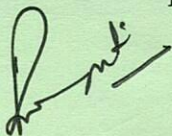
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03/11/2015

but the applicant himself sustained injury on his knee. He has also contended that after usual investigation police has submitted the challan, wherein all the witnesses are police officials, hence there is no likelihood of tampering with prosecution evidence. Learned counsel further contended that since the alleged pistol has not been sent to ballistic expert for report, it is fit case for further inquiry.

5. The learned D.D.P.P while opposing grant of bail to accused has argued that the Arms Act, 2013, has been enacted to curb the proliferation of arms and ammunition in the society and since the crime rate is being increased day by day and the applicant was arrested after an encounter, he is not entitled for the concession of bail.

6. It appears from the material available on record that an unlicensed pistol has allegedly been recovered from the possession of applicant, which according to prosecution was used in commission of an offence under Section 324, 353 P.P.C. The pistol falls within the definition of "arms" as contemplated under Section 2 (c) of the Sindh Arms Act, 2013, for that maximum punishment is upto ten years as provided under Section 25 of the said Act. The case of the applicant is pending for adjudicating into the guilt of the applicant before the trial Court. The discretion is, however, left open with the trial Court by the legislature either to award maximum or the lesser punishment to the accused keeping in view the surrounding circumstances commensurate with the nature of the case. The Court while hearing bail application does not have to keep in view the maximum sentence provided by the statute but the one which is likely to be awarded in the facts and circumstances of the case.

7. Reverting now to the facts of the case, it is an admitted position that the pistol allegedly recovered from the possession of the applicant, has not been sent to the Ballistic Expert for report; that

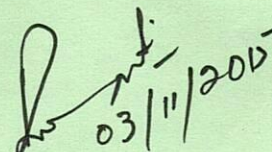


in the present case all the witnesses are police officials, therefore, there is no apprehension of tampering with the prosecution evidence; the police has submitted challan before the learned trial Court, thus, the applicant is no more required by police for further investigation. It is well settled law that bail cannot be withheld as punishment. Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the present applicant requires further inquiry as contemplated under subsection (2) of Section 497 Cr.P.C. Accordingly, the applicant is entitled to be released on bail.

8. In view of above, the applicant is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Fifty thousand rupees) and P.R bond in the like amount to the satisfaction of trial Court.

9. Needless, to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of applicant on merits.

Bail application stands disposed of.

  
03/11/2005  
Judge