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ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
1st. CrI. Bail Appln. No.S-41 of 2020.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For orders on office objection 'A'.
2. For hearing of bail application.

09.03.2020

Mr. Faiz Muhammad Larik, advocate for the applicant.

Mr. Ali Anwar Kandhro, Addl. P. G.

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Having been rejected his earlier application for grant of bail bearing No.12/2019 by the learned Additional Sessions Judge-II, Jacobabad, vide order dated 20.01.2020, applicant/accused Niaz Ahmed son of Naseer Ahmed seeks post arrest bail in Crime No.243/2019 registered under sections 269, 270, 337-J, PPC at Police Station Saddar Jacobabad.

2. Briefly stated the facts of the case are that on 27.11.2019, ASI Fazal Muhammad Chalgiri lodged aforementioned FIR, stating therein that on the said date vide entry No.20 at 1613 hours, he left Police Station for patrolling along with sub-ordinate staff and reached Mamal Phatak, where he received spy information that one accused was taking Gutka in Mehran Car coming from Balochistan via Link Road, he reached the pointed place and arrested the applicant on being found in possession of three bags of Pan Parag Gutka, one bag JAM Gutka and one Safina Gutka. Out of them five packets each from one Bag, were separately sealed as sample for analyst and the applicant was arrested for keeping poisonous Gutka hazardous for human health.

3. Heard the learned counsel for the applicant as well as Addl. P. G and perused the material available on record.

4. As per prosecution case, the alleged articles were recovered from the possession of the applicant on 27.11.2019, but the samples were sent to the office of Government Public Analyst, Food Analysis Laboratory Sukkur @ Rohri on 06.12.2019, after the delay of ten days and no explanation has been furnished by the prosecution for such delay. As per FIR, three plastic bags were found containing Pan



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Parag Gutka, one plastic bag containing JAM Gutka and one plastic bag containing Safeena Gutka, but as per the case property received in the Office of Government Public Analyst one packet of Safeena Gutka, three bags of Z-21 Gutka and one packet of Pan Parag Gutka were received in the office. Hence the sample sent to said office was not containing representative sample of three bags of Pan Parag as alleged by the prosecution that the same was sealed separately from each bag. It appears from the perusal of report of Government Public Analyst that the date of manufacturing of the article was mentioned as August 2019 with date of expiry as August 2021 and the same were made in India and the same were found by the Government Public Analyst not recommended for human consumption, within the meaning of section (5) of Pure Food Ordinance 1960 and also contravene the provision of Rule (11) of Sindh Pure Food Rules 1965, with respect the tests performed. Hence it is yet to be seen if the ingredients of Section 337-J are available to prosecution in the case in hand which can only be decided after full-fledged trial of the applicant. It is therefore, a fit case of further enquiry within the scope of sub-section (2) of Section 497, Cr.P.C. Accordingly, the applicant is admitted to post arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- Rupees. Two hundred thousand only) and P.R bond in the like amount to the satisfaction of learned trial Court.

5. Needless to mention that the above observations of this Court are tentative in nature and shall not influence the trial Court to decide the matter on merit. In case the applicant misuses the concession of bail in any manner whatsoever, the trial Court shall be at liberty to cancel the bail of the applicant after serving him requisite notice.

  
Judge