

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-235 of 2013.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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17.7.2013.

1. For orders on office objection as Flag 'A'
2. For orders on M.A.No.1415/2013
3. For orders on M.A.No.1416/2013.
4. For Hearing.

Mr. Asif Ali Abdul Razak Soomro, advocate for applicant.

Mr. Riaz Hussain Khoso, State Counsel.

Applicant Deedar Shar seeks post arrest bail in crime No.109 of 2013, for offence punishable under section 23(i)(a) of Sindh Arms Act, 2013, registered at Police Station New Faujdari, district Shikarpur.

2. Precisely, the relevant facts of the case are that complainant SHO, Noorudin Jakhero lodged FIR; wherein it is contended that on receiving a tip-off that absconding accused namely Abdul Ghani Khoso and other 20/21 accused persons are busy in gambling with playing cards, at Gambling Den of Javed Khoonharo in Hathidar Muhalla in the common street; reached at pointed place, alongwith his sub-ordinate staff; raid was conducted, during raid the applicant was arrested and from his personal search recovery of one T.T Pistol along with magazine and bullets were effected. After usual investigation, accused was sent up for trial.

3. Counsel for the applicant, *inter- alia*, contended that in spite of prior information, and alleged recovery effected from populated vicinity; independent witnesses have not been joined by police; according to provisio 23(1) (a) of Chapter 5 of Sindh Arms Act 2013, *punishment may be extended up to 14 years*, is provided hence lesser punishment can be considered while extending concession of bail; instant recovered T.T pistol is licensed pistol of Mazar Khan s/o Allah Rakhio, who had filed affidavit before the trial Court, contending therein that the same had been taken away by the police officials on 02.6.2013; so also copy of license reflects that it was renewed on 19.2.2013, scuh copy was produced before the trial Court and the same is also





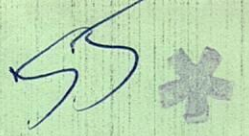
submitted before this Court. Applicant's case falls within the scope of further enquiry, thus the applicant is entitled for post arrest bail.

4. Conversely State Counsel argued that the alleged offence is punishable up to 14 years, the same falls within the prohibitory clause of sub section (1) of section 497, Cr.P.C. The recovery was effected from the exclusive possession of the applicant and applicability of section 103, Cr.P.C is excluded in this case by way of section 34 of The Sindh Arms Act 2013.

5. After careful consideration of contention raised by the counsel's for respective parties and meticulous examination of material available on record, it is manifest that complainant on receiving a tip-off, conducted raid at pointed place, which was situated in Hathidar Muhallah, Shikarpur and recovery of one pistol was effected from the applicant. But candidly, independent witnesses were not joined by the police officials in spite of prior information. It is further surfaced that alleged recovered T.T pistol is licensed weapon of one Mazar Khan s/o Allah Rakhio Mahar who had filed an affidavit before the trial Court, such certified copy is available on record wherein it is contended that "on 02.6.2013, he was available at Saloon situated at Shikarpur and his weapon was lying on the bench. Meanwhile, police reached there, and took away his pistol which was foisted upon the applicant; therefore, instant case is false." Further, it evident that license is available on record, which reflects that it was renewed on 19.2.2013. Hence, *prima facie*, instant matter requires further probe.

6. Regarding contention of learned State Counsel that instant matter falls within prohibitory clause thus applicant is not entitled for bail; it is suffice to say that it is settled principle of law that bail can not be withheld as punishment, and , even in cases , which falls within prohibitory clause, bail can be granted if there appears that, reasonable grounds are not in existence for believing that the accused has committed a non-bailable offence, and sufficient material is available for further inquiry into his guilt as contemplated in sub section 2 of section 497 Cr.P.C.

7. Keeping in view the above given circumstances, applicant has succeeded to bring his case within purview of sub section 2 of section 497 Cr.P.C, thus the



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


Judge

M.Y. Panhwar*