

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Criminal Bail Application No.S-216 of 2015

DATE **ORDER WITH SIGNATURE OF JUDGE**

For hearing.

11-05-2015

Mr. Roshan Ali Shah Bukhari advocate for applicant.

Mr. Shahid Ahmed Shaikh, A.P.G. Sindh.

The applicant through the instant application has prayed for grant of bail in crime No.50/2014 of PS Qasimabad, Hyderabad for the offence under section 23(A) of Sindh Arms Act, 2013.

Precisely the facts of the case are that the complainant along with subordinate staff was on patrolling duty on 09-11-2014, during which when he reached Goods Naka Road, Rickshaw Market, Hyderabad, he spotted the present applicant who seeing the police party tried to run away. However, the police party was able to arrest him and from his possession a TT pistol of 30 bore with one bullet along with the magazine containing three live bullets was recovered. Memo of such arrest and recovery was prepared. The accused was brought along with property at PS where the instant case was registered against him.

Mr. Roshan Ali Shah Bukhari, learned counsel for the applicant has argued that the alleged pistol has been foisted upon the applicant who is innocent and has not committed the present offence. He states that in similar circumstances this Court has granted bail to one accused namely

Muhammad Asif in Criminal Bail Application No.S-1240 of 2014 for the same offence by considering rule of lesser punishment, which if the prosecution is able to prove the case against the accused would be awarded to him. He has next contended that the memo of arrest and recovery does not show that the alleged weapon recovered from the applicant was sealed at the spot or not. His next contention is that though the area was accessible to the general public but neither the FIR nor the memo of arrest and recovery show that any efforts were made by the police officials to procure the attendance of the private persons to witness the recovery proceedings. He has lastly prayed for release of the applicant on bail.

Mr. Shahid Ahmed Shaikh, learned A.P.G. Sindh, on the other hand has opposed the grant of bail by arguing that the offence carries punishment for more than ten years and comes under the prohibitory clause under section 497(1) Cr.P.C. He has, however, admitted that in memo of arrest and recovery it is not mentioned whether recovered pistol from the applicant was sealed at the spot or not.

I have heard both the counsel and perused the record as it stands. The precise allegations against the applicant are that from his possession, one TT pistol of 30 bore and 4 bullets were recovered. The arguments of the learned counsel that the place of incident though was accessible to the general public but no efforts were made by the complainant to procure the attendance of the witnesses, carries weight in the peculiar facts and circumstances of the case. The memo of arrest and recovery does not show

that the weapon was sealed at spot or not and the implication of the same have to be evaluated by the trial Court during trial. No doubt the punishment provided for the offence is ten years but discretion has been left with the trial Court to punish the accused upto ten years in case the prosecution brings guilt of the accused home therefore, the quantum of punishment could only be determined when the trial is over. Despite lapse of almost 6 months, since arrest of the accused, no progress has been made in the trial, though all the witnesses are police officials. In view of above, I am of the view the applicant has made out the case for bail. He, therefore, is granted bail on his furnishing a solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand only) with PR Bond in the like amount, to the satisfaction of the trial Court.

Criminal bail application stands disposed of.

JUDGE

A.C