

21

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Ist. CrI. Bail Appln: No.S-681 of 2023.

Applicant : Abid Hussain Chachar, through Mr. Habibullah G. Ghouri, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing: : 22.12.2023.

O R D E R

MOHAMMAD SALEEM JESSAR, J.- Applicant/accused Abid Hussain son of Niaz Muhammad Chachar, stand booked under Crime No.82/2023, Police Station Karampur for the offence punishable to Section 23(i) (a) Sindh Arms Act 2013, (The Act). After completion of investigation, the case has been challaned which is now pending for trial before the Court of Ist. Additional Sessions Judge, Kandhkot, (the trial Court) vide Sessions Case No.96/2023 Re-State v. Abid Hussain. The applicant filed bail application No.176 of 2023 before the trial Court. The trial Court after hearing the parties and considering the submissions advanced by either side, has turned down his request for the bail. Hence instant bail application has been maintained before this Court.

2. Crux of prosecution case as unfolded by complainant ASI Abdul Rasheed Bozdar of Police Station Karampur are that on 10.10.2023, he along with his subordinates was present at Police Station where they received spy information that a suspicious person is standing at Radi Begari. Upon receipt of such information, he along with his subordinates had left the Police Station vide Daily Diary entry No.13 dated.10.10.2023 at 1630 hours and proceeded towards pointed place, when at about 1650 hours they reached there, saw a person who by seeing the police party in proper uniform attempted to flee away; however, the police party alighted from the vehicle and by following said person have apprehended him at the distance of 10 paces. Due to non availability of private persons he by citing PC Altaf Hussain and PC Allah Bux as mashirs had enquired from the person of his whereabouts who disclosed to be present applicant. On his personal search a 30 bore Pistol along with a magazine containing four 30 bore live bullets were



secured for which he disclosed it to be unlicensed. Such memo of recovery and arrest was prepared on spot. Later the police party came back to Police Station along with the accused as well as property and lodged instant FIR on behalf of State in above terms.

3. Learned counsel for the applicant submits that the case has been challaned by the police, as such, the applicant is *no more* required for any further investigation; in support of his contention, he submits certified copy of challan, which is taken on record. He further submits that the punishment provided by the law for alleged offence is discretionary; hence, he is entitled for the bail. He further submits that the applicant is first offender and not a previous convict, therefore, case against him requires further enquiry. In support of his contentions, he has relied upon the cases reported as Yaqoob alias Lala v. The State (2016 P.Cr.L.J 1658) and Arbab v. The State (PLD 2014 Sindh 476).

4. Learned Addl. P. G, on the other hand, opposed the grant of bail, on the ground that the applicant was arrested by the police along with an unlicensed Pistol, which is punishable upto 14 years, therefore, he is not entitled to concession of bail.

5. Since the prosecution has not brought any tangible evidence which may show the applicant to be a previous convict or involved in any criminal activity hence carrying a weapon by the applicant at the particular place has not been justified by the Investigating Officer. As far as punishment of the offence is concerned, the Legislature has left it upon the discretion of the trial Court who after recording evidence may determine the quantum of sentence. In the circumstances and in view of above, I am fortified with the dicta laid down by the learned Bench of this Court in case of **AYAZ ALI v. THE STATE** (PLD 2014 Sindh 282). It will be appropriate to reproduce para-10 of said order, which reads as under:

"10. As the quantum of punishment has to be determined by the trial Court. In such like cases whether accused would be liable to the maximum punishment provided for the offence and also as to whether the punishment in case of proof of the guilt after trial in the circumstances would fall under the prohibitory clause are the questions requiring further probe, as the maximum punishment provided under section 24 of the S.A.A., 2013, is ten years, discretion is left upon the trial Court by the Legislature to decide the fate of the case according to the circumstances of the case commensuration with the nature of case. The record is also silent as to whether the applicant is

50

a habitual or previous convict, hence all these facts makes the case against him as that of further enquiry."

6. Keeping in view above facts and circumstances and in view of the principles enunciated by this Court in cases of *Arbab v. The State* and *Yaqoob alias Lala v. The State (supra)* as well as in case of *AYAZ ALI versus THE STATE (PLD 2014 Sindh 282)*, the applicant/accused has been able to make out a good *prima facie* case for grant of post arrest bail. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (rupees one hundred thousand only) and PR bond in the like amount to the satisfaction of trial Court.

7. Needless to mention here that the observations made herein-above are tentative in nature, which shall not prejudice the case of either party at trial.

  
Judge

M. J. P. / \*\*