

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Ist. Crl. Bail Appln: No.S-698 of 2023.

| 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.

15.12.2023

Mr. Muhammad Afzal Jagirani, advocate for the applicant.

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

O R D E R .

Applicant/accused Illahi Bux son of Muhbat, seeks post arrest bail in Crime No.143/2023, for offence under section 23(i) (a) Sindh Arms Act 2015, registered at Police Station B-Section Kandhkot, District Kashmore at Kandhkot. The case after thorough investigation has been challaned by the police on 25.10.2023, which is now pending for trial before the learned Sessions Judge, Kashmore at Kandhkot.

2. According to the case of prosecution, on 12.10.2023, complainant HC Abdul Aziz Jaffari, lodged the aforesaid FIR alleging therein that on the same day, he along with his subordinates armed with respective official weapons left PS for patrolling, after patrolling from different places, when they reached at Thull-Kandhkot road near Ramzan Larro, received spy information that near Jiskani Chutal Bano, one person is waiting for conveyance who possess one Gun, on receipt of such information, complainant conveyed such information to his staff and proceeded to the pointed place at 1800 hours, they saw that one person having Gun was standing there, who noticing the police party started running, the police party succeeded to apprehend the accused. The complainant enquired about his detail, who disclosed his name to be Illahi Bux son of Muhbat Khan Mazari, and secure case property and checked the weapon and found empty. PC Lihaque Khan and PC Akhtiar Hussain were nominated as mashirs. Police party also made

personal search of accused and recovered Five Live Cartridges and two hundred rupees from his right pocket, further he did not provide valid license of weapon. The property was sealed and prepared such memo of arrest and recovery in presence of said mashirs, thereafter, complainant brought the accused and case property at PS and lodged instant FIR as stated above.

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 law for the 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 and an unlicensed Gun has been recovered from him, which is punishable upto 14 years, therefore, he is not entitled to concession of bail.

5. It is the case of prosecution that the applicant was found in possession of an unlicensed Gun; however, it has not been shown that why the applicant being one person was carrying lethal weapon, more particularly when he is not shown to be a previous convict or involved in any other criminal case. As far as punishment of the offence as provided by the law is concerned, per the Act, it has been left upon the discretion of the Court which after recording evidence of the prosecution witnesses may award sentence from zero to 14 years. It is also an admitted position that the case has been challaned, therefore, the

3

applicant is no more required for investigation purpose. There is no apprehension of tampering with the prosecution evidence. The Court while hearing bail application is not to consider the maximum sentence provided by the statute, as such, the offence does not fall within prohibitory clause of Section 497, Cr.P.C, therefore, he deserves to be released on bail.

6. Keeping in view the above facts and circumstances and in view of the principles enunciated by this Court in the reported cases of *Arbab v. The State* and *Yaqoob alias Lala v. The State* (supra) as well as in case of *Ayaz Ali v. The State* (PLD 2014 Sindh 282), the applicant/accused has been able to make out a case for grant of bail. Therefore, instant bail application is allowed and the applicant is directed to be released on bail on 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.

JUDGE



M.Y.Panhwar/**