

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**
Cr. B.A. No.S-448 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing.

16.09.2015.

Mr. Amjad Ali Mangi, advocate for the applicant.

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

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NAZAR AKBAR, J.-After rejection of his earlier bail application vide order dated 02.04.2015, passed by learned Illrd Additional Sessions Judge, Hyderabad, the applicant has approached this Court seeking post-arrest bail in Crime No.70/2015, under section 23-A, Sindh Arms Act, 2013, registered at Police Station Pinyari.

2. Brief facts of the prosecution case, as stated in the FIR, are that on 16.03.2015 at 0120 hours, complainant ASI Imran Akhtar Chandio of Police Station Pinyari, Hyderabad alongwith his subordinate staff while patrolling in his area reached near village Adho Khan Jatoi apprehended the applicant/accused and on his personal search, one 30-Bore TT pistol alongwith one magazine containing 02 live bullets were recovered. Thereafter, the complainant lodged F.I.R. on behalf of the State.

3. Learned counsel for the applicant mainly contended that the applicant has been falsely involved in this case; that he is no more required for investigation purpose; that the unlicensed 30-Bore pistol, allegedly recovered from the possession of the applicant has not been sent to the Ballistic Expert for report and the punishment of the alleged offence extends to 10 years. According to learned counsel, alleged offence does not fall within the prohibitory clause of section 497 Cr.P.C. The learned counsel for the applicant in support of his contentions placed his reliance on an unreported order passed by this Court Cr. B.A. No.S-447/2015.

4. Mr. Shahid Ahmed Shaikh, the learned A.P.G, appearing on behalf of the State argued that the Sindh Arms Act, 2013 has been enacted to curb the proliferation of arms and ammunition in the society and offence falls within the prohibitory clause of section 497 Cr.P.C. He opposed the grant of bail to the applicant.

5. I have heard the arguments of learned counsel for the applicant, learned A.P.G. appearing for the State and perused the record carefully. In the present case all the prosecution witnesses are police officials, hence there is no apprehension of tampering with the evidence; that the case has been challaned and the applicant is no more required for investigation purpose; that the unlicensed 30-Bore pistol, allegedly recovered from the possession of the applicant has not been sent to the Ballistic Expert for report. In Section 24 of The Sindh Arms Act, 2013, it is mentioned that punishment of un-licensed arm may extend to ten years and with fine. The case of the applicant falls within the definition of "arms" as contemplated by section 2 of The Sindh Arms Act, 2013, whereby maximum punishment is up to ten (10) years as provided under section 24 of the said Act. The case of the applicant is pending for adjudicating the guilt of the applicant before the trial Court. The discretion is however left open with the Court by the legislature either to award maximum punishment to the accused or to award lesser punishment keeping in view the surrounding circumstances commensurating with the nature of the case. The Court while hearing bail application does not have to keep in view the maximum sentence provided by statute but the one which is likely to be entailed in the facts and circumstances of the case. In the present case, one unlicensed 30-Bore pistol has allegedly been recovered from the possession of the applicant. It has been argued by learned counsel for the applicant that police had ill-will against the applicant to foist such pistol upon him. Turning now to the facts of the case, it is an admitted position that the pistol which is alleged to have been recovered from the possession of the applicant has not been sent to the Ballistic Expert for calling his report; the prosecution has submitted challan before the learned trial Court and there is no likelihood of

the applicant to tamper with the prosecution evidence. The applicant is no more required for further investigation. It is well settled law over the past decades that bail cannot be withheld as punishment. Therefore, keeping in view the facts and circumstances of the case, prima facie, case against the present applicant requires further enquiry as contemplated under subsection (2) of Section 497 Cr.P.C. Accordingly, the applicant is admitted to bail subject to furnishing solvent surety in the sum of Rs.50,000/- (fifty thousand) and P.R. Bond in the like amount to the satisfaction of the trial Court.

Bail application stands disposed of.

JUDGE

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