

ORDER SHEET
LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Crl. Misc. No.2911-B/2016/BWP.

Sohail Asghar.

Vs.

The State & another.

<i>S.No. of Order/ Proceeding</i>	<i>Date of order/ proceeding</i>	<i>Order with signature of Judge and that of parties or counsel where necessary</i>
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04.01.2017

*Mr. Muhammad Tayyab Zameer Khan,
Advocate alongwith the petitioner.
Malik Muhammad Latif, Deputy Prosecutor
General along with Ata Muhammad, A.S.I.*

Petitioner Sohail Asghar seeks pre-arrest bail in F.I.R. No.383/2016 dated 09.11.2016 registered under sections 22/21-(1)(2)b/26-A of Agricultural Pesticide Ordinance, 1971 amended 1997 Rules 1973, at Police Station Donga Bonga, District Bahawalnagar.

2. I have heard the arguments of learned counsel for the parties and perused the record.

3. Record transpires that on 22.09.2016, complainant Malik Mazhar Hussain, Assistant Director, checked the shop of accused / petitioner situated at Ghalla Mandi, Donga Bonga, and during checking, samples of monomehypo and acetamiprid were procured on 22.09.2016, whereby report to the extent of acetamiprid was declared fit, whereas report regarding other pesticide was received with the finding that sample, referred to, is not of standard quality as specified and is

substandard. However, the F.I.R. has been registered on 09.11.2016, whereas the samples were procured on 22.09.2016 and the report was received on 03.11.2016. It has not been disputed by the prosecution itself that the accused / petitioner is holding a valid license to keep and sell the pesticides. It is also an admitted fact that petitioner has a lawful license of dealership to run the business of pesticides and petitioner is dealing with sale of pesticides, which is a registered pesticides' company, while there is no allegation against accused / petitioner that he has tampered with the seals of packs and under the law, petitioner is required to sell only such stock of pesticides, which was duly registered in the manner provided in the statute or the rules framed therein. Petitioner had offered to sell away pesticides, which were manufactured by a renowned manufacturing pesticides' company i.e. Agri Leaf International, Khan Pur and if it contains any deficient component, it was none of his fault as the Investigating Officer has not got it verified from the above said manufacturing unit whether or not the pesticides recovered from the shop of petitioner had been prepared by the said manufacturers and it is not the case of prosecution that the seals of pesticides collected for same purpose had been broken or tampered, therefore, prima facie petitioner, being only dealer of said pesticides, cannot be held responsible as he being

registered dealer can take at the most or be treated as a witness and main liability would lie on the shoulders of manufacturer of the substandard pesticide. But so far, no manufacturer has been arrayed as accused in this case. Even otherwise, petitioner has joined investigation and nothing is to be recovered from his possession. Petitioner is not charged with the offence covered by prohibitory clause and no useful purpose would be served in sending them behind the bars.

4. In view of above, attempt on part of the prosecution to arrest the petitioner alone by letting off the manufacturer of substandard pesticides, is a clear case of mala fide on its part and being so, the accused / petitioner is entitled to the concession of pre-arrest bail.

5. For the foregoing reasons, this Court is left with no option except to allow this petition and confirm ad-interim pre-arrest bail already granted to the petitioner, namely, Sohail Asghar in terms of order dated 26.12.2016 subject to his furnishing fresh bail bonds in the sum of Rs.1,00,000/- (Rupees One Hundred Thousand) only with one surety in the like amount to the satisfaction of the learned trial Court.

6. However, it is made clear that the findings made hereinabove are tentative in nature and are meant

only for disposal of the instant petition. These shall have no bar to any body's case at trial stage.

(Habib Ullah Amir)
Judge

Approved for reporting.

Judge

A.H.S.