

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No. 72710/B/2022

Muhammad Farman

Vs

The State etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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31.3.2023 Malik Muhammad Arshad Kundi, Advocate, with the
Petitioner.
Mr. Muhammad Mustafa Chaudhry and Rana Tasawar Ali
Khan, Deputy Prosecutors General.

Tariq Saleem Sheikh, J. – Through this application,
the Petitioner seeks pre-arrest bail in case FIR No.545/2022 dated
4.11.2022 registered at Police Station Kundian, District Mianwali,
for offences under sections 21(1), 21(2)(b), and 21-A of the
Agricultural Pesticides Ordinance, 1971 (the “Ordinance”).

2. The prosecution case is that the Petitioner runs a
general store at Noon Market Melaywali. On 2.11.2022, Amir
Sohail, Inspector Pesticides/Agriculture Officer Plant Protection,
seized expired pesticides from his shop which he was offering for
sale. During interrogation, the Complainant found he had no
licence to sell such items.

3. Arguments heard. Record perused.

4. The police have booked the Petitioner under sections
21(2)(a), 21(2)(b) and 21-A of the Ordinance. Section 21(1)
makes it illegal to import, manufacture, formulate, sell, stock or
advertise adulterated and substandard pesticides. Clause (a) of
section 21(2) provides for the punishment for adulterated
pesticides, while clause (b) thereof provides for the punishment of
substandard pesticides. Section 3 defines the terms “adulterated”
and “substandard” as follows:

- (a) “adulterated” in relation to a pesticide means a
pesticide with which spurious, deleterious or harmful
substance has been mixed or which is wholly or mainly
ineffective for the purpose for which it is intended.

- (rr) “substandard” when used with reference to a pesticide, means any pesticide, the strength or purity of which falls below the professed standard or quality which is expressed on its label or under which it is sold or a pesticide any valuable ingredient of which has been wholly or partially extracted.

5. The term “expired pesticide” is neither expressly defined nor mentioned in the Ordinance nor the Rules made thereunder (Punjab Agriculture Pesticides Rules, 2018). There is only one reference in Rule 13(1)(b) of the Rules of 2018 which reads as follows:

13. Packing, re-packing or re-filling of pesticides.– The manufacturers and formulators, before passing on the pesticides to the distributors, dealers or retailers, shall supervise:

- (a) ...
- (b) affixation of the date of expiry, price, label the name, address and phone number of the manufacturer and formulator.

6. Does the “expired pesticide” fall in the definition of “substandard” given in clause (rr) of section 3 of the Ordinance?

7. “Substandard” products are those which are authorized but do not fulfil their quality standards or specifications. In this sense, they are distinct from “falsified” products, which intentionally or fraudulently misrepresent their identity, composition or source. Falsification includes substitutions and reproduction and/or manufacturing of an unauthorized product. Falsified products consist of innovator and generic products and items that lack active ingredients, have insufficient active ingredients, have the wrong ingredient, and/or contain hazardous contaminants or pathogens.

8. Product labels have various dates, each with its own meaning. Manufacturers use these dates to share special information with buyers. The “expiry date” advises buyers of the date up to which the manufacturer expects his product to retain its claimed efficacy, safety, quality or potency. The use-by-date alerts consumers when the product’s quality may degrade. The phrase “best by date” indicates that the item’s taste, flavour or texture may deteriorate beyond that date. Therefore, even after the

“best before date”, a product can be consumed because it is safe though it may not be as good as if used within the stipulated time limit. On the other hand, once the “expiry date” passes, the product is not fit for consumption.

9. The term “substandard” in section 3(rr) applies to two types of products: (a) the pesticide whose strength or purity falls below the purported standard or quality specified on its label or under which it is sold; (b) the pesticide whose valuable ingredient has been wholly or partially extracted. Pesticides that have passed their expiration date lose their effectiveness. They may also change chemical composition, harming not just the crop but also people and the environment. Pesticides sprayed too close to water might drift and deposit fine spray droplets away from their target, contaminating surface water. Drift incidents can pollute surface water more than runoff or leaching. Therefore, expired pesticides are included in part (a) of the definition of “substandard” given in section 3(rr) of the Ordinance. Consequently, the provisions of section 21(2)(b) apply when a person sells expired pesticides.

10. The Petitioner’s counsel contended that the prosecution must demonstrate through a laboratory test that an expired pesticide has become “substandard” before alleging a violation of section 21(2)(b) of the Ordinance. I am afraid that is not required because the manufacturer declares on the label that the product’s quality will deteriorate after the expiry date.

11. The Petitioner is also accused of selling pesticides without a licence. The Deputy Prosecutor General admitted that the Ordinance does not provide for such an offence. Therefore, in my opinion, section 21-A of the Ordinance would apply. That offence is also cognizable and non-bailable under section 26-A.

12. The Petitioner has failed to point out any *mala fides* on the part of the Complainant or the police regarding registration of the instant case, which is a pre-requisite for the grant of pre-arrest bail. In ***Muhammad Sadiq and another v. The State and***

another (2015 SCMR 1394), the Supreme Court of Pakistan ruled that bail before arrest is an extraordinary relief. It is meant to protect innocent people implicated in a criminal case for devious and ulterior motives. It cannot be granted unless the accused meets the conditions mentioned in section 497(2) Cr.P.C. He must demonstrate that reasonable grounds exist to believe that he is not guilty of the alleged offence and there are sufficient grounds to warrant further inquiry. In *Aamir Bashir and another v. The State and others* (2017 SCMR 2060), the Supreme Court held that “besides making out a *prima-facie* case for the grant of pre-arrest bail, the accused-petitioner must show some *mala fide* on the part of the complainant and the investigating agency.”

13. This application is **dismissed**.

(Tariq Saleem Sheikh)
Judge

Naeem