

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Bail Application No.S-634 of 2025

Applicant: Mukhtiar Ali son of Mohammad Uris alias Vikio
Mallah through Mr. Ali Ahmed Zaman Patoli,
Advocate

For the State: Mr. Irfan Ali Talpur, D.P.G along with Inspector
SHO
Zahoor Ahmed Noonari PS B-Section TMK.

Date of hearing: 15-08-2025

Date of Order: 15-08-2025

ORDER

Jan Ali Junejo, J. – The applicant, Mukhtiar Ali S/o. Mohammad Uris @ Vikio, seeks post-arrest bail under Section 497, Cr.P.C. in Crime No.76 of 2025, registered at Police Station B-Section, Tando Mohammad Khan, for offences punishable under Sections 8 & 10 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019. It is pertinent to mention that the applicant's earlier bail plea was dismissed by the learned Sessions Judge, Tando Mohammad Khan, vide order dated 27.05.2025. The present application has been filed as a continuation of the applicant's right to seek bail before this Court.

2. The prosecution case, as set out in the FIR, is that on 21.05.2025 at about 09:30 a.m., the complainant Inspector Zahoor Ahmed Noonari, SHO of Police Station B-Section, Tando Mohammad Khan, along with his subordinates, was on routine patrolling duty in Government Vehicle No. SPC-237 when they allegedly noticed one person standing near Burdi Mori with a white sack, who attempted to flee upon seeing the police. He was

apprehended, and upon search, the sack was found to contain 2,000 mainpuries allegedly hazardous to human health. The complainant separated five (05) mainpuries for chemical examination while the remaining 1,995 were sealed in the same sack. A mashirnama of arrest and recovery was prepared in presence of police witnesses, and the accused disclosed his identity as Mukhtiar Ali S/o. Mohammad Uris @ Vikio. Thereafter, he was taken to the police station, and FIR No.76/2025 was registered under Sections 8 and 10 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019. After initial remand, his bail plea was dismissed by the learned Sessions Judge, Tando Mohammad Khan, vide order dated 27.05.2025, hence the present application before this Court.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to police enmity. He argued that no private mashirs were associated during the recovery proceedings despite the alleged incident having occurred in a public place, which casts doubt on the veracity of the case. Only five (05) out of 2,000 mainpuries were sent for chemical analysis, leaving the nature of the remaining pieces unverified, thereby diminishing evidentiary value of the recovery. It was further argued that the FIR does not mention the source of procurement, manufacturing site, or any purchaser of the alleged contraband, making the prosecution story improbable. He further submitted that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., and that there is no apprehension of abscondence, tampering with evidence, or repetition of the alleged offence, thereby entitling the applicant to bail as a matter of rule while refusal is an exception. Lastly, the learned counsel prayed for grant of bail.

4. Conversely, learned D.P.G., assisted by the investigating officer, opposed the bail plea on the ground that a huge quantity of injurious and

health-hazardous substance was recovered from the possession of the applicant, which by itself is sufficient to connect him with the commission of offence. He argued that offences under the SPPMSGM Act, 2019, pose a serious threat to public health and are on the rise, warranting stringent view by the courts. It was submitted that no mala fide or enmity has been alleged or established against the police to justify false implication or foisting of such a large quantity of contraband. It was thus contended that sufficient prima facie material exists on record, and the applicant does not deserve the concession of bail at this stage.

5. I have carefully considered the submissions advanced by learned counsel for the applicants as well as the learned Deputy Prosecutor General for the State and have undertaken a tentative appraisal of the material available on record, as is permissible at the bail stage. Perusal of the record demonstrates that no private mashir was associated during the alleged recovery proceedings despite the incident having purportedly occurred in a public place where independent witnesses could have easily been procured. While police officials are not legally disqualified from acting as witnesses, the absence of independent corroboration, particularly in cases involving alleged recovery of contraband, calls for careful judicial scrutiny at the bail stage. Furthermore, the FIR is silent regarding the source of procurement, the place of manufacturing, or the identity of any purchaser or distributor, which diminishes the overall evidentiary value of the prosecution's case at this preliminary stage. It is also significant that the offence alleged under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019 carries a maximum punishment of three years, which squarely places it outside the prohibitory clause of Section 497(1), Cr.P.C. The settled principle, as consistently reiterated by the

Honourable Supreme Court of Pakistan, is that in cases not falling within the prohibitory clause, the grant of bail is to be treated as a rule, while refusal is an exception. This exception can only be invoked in the presence of extraordinary circumstances such as a likelihood of abscondence, the possibility of tampering with prosecution evidence, or a reasonable apprehension of repetition of the offence. No such circumstances have been demonstrated or substantiated in the present case. The Honourable Supreme Court of Pakistan in case of *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)* reaffirmed this principle by observing that: *“The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court”*. Moreover, there is nothing on record to suggest that the applicant has any previous conviction or that he is a habitual offender. Likewise, no material has been presented to indicate that he is likely to abscond or misuse the concession of bail if granted at this stage. It is also a settled principle of law that mere registration of a case, without concrete evidence of flight risk or prior criminal conduct, is insufficient to deprive an accused of the benefit of bail, particularly when the alleged offence does not fall within the prohibitory clause. In these circumstances, the applicant has successfully made out a case for grant of bail.

6. In view of the foregoing, the applicant Mukhtiar Ali son of Mohammad Uris alias Vikio was admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court and these are the reasons of my short Order dated 15.08.2025.

7. It is clarified that any observation made herein is of tentative nature and shall not prejudice the case of either party during the trial. If the applicant misuses the concession of bail or attempt to tamper with prosecution evidence, the trial Court shall be at liberty to take appropriate action in accordance with law.

JUDGE

Ahmed/Pa,