

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Crl. Bail Application No.S-734 of 2025

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| Applicant: | Abdul Jabbar son of Ghul Qadir, through Mr. Khalid Saeed Soomro, Advocate. |
| For the State: | Mr. Irfan Ali Talpur, D.P.G. |
| Date of hearing: | 19-08-2025 |
| Date of Order: | 19-08-2025 |

ORDER

Jan Ali Junejo, J. – The applicant has filed the present application under Section 497, Code of Criminal Procedure, 1898, seeking bail in FIR No. 177 of 2025 registered at Police Station A-Section, Dadu, for offences under Sections 4/8 and 9/10 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The learned Additional Sessions Judge-II, Dadu, vide order dated 28.06.2025, had earlier dismissed the applicant's bail plea.

2. The prosecution case, as per FIR No. 177/2025 registered at P.S A-Section, Dadu, alleges that on 10.06.2025, a police party led by SIP Sajjad Ali Jamali, acting on secret information, apprehended the applicant at the cattle farm of one Ghulam Qadir Khokhar in Gareebabad Colony, Dadu. The applicant was allegedly loading bags of betel nuts (Supari) into a rickshaw. Upon seeing the police, he attempted to flee but was restrained. From the rickshaw, 4 bags of betel nuts were recovered. Subsequently, on the applicant's alleged pointation, 104 bags were recovered from ditches at the cattle farm. The total recovery is stated to be 3770 packets of various brands of betel nuts

(Z-21, AADAB, TAJ) out of them one packet from each sack was separated and sealed for chemical examination while remaining property was separately sealed. The applicant was arrested, and the contraband and rickshaw were seized. The FIR was registered on the allegation that the applicant was involved in the sale of these prohibited substances.

3. Learned counsel for the applicant vehemently argued that the applicant is innocent and has been falsely implicated due to a pre-existing monetary dispute and animosity between the farm owner, Mehboob Khokhar (who was already in jail), and the brother of the complainant police officer. It is further argued that no recovery was made from the exclusive possession of the applicant. The bags were on a rickshaw and in ditches on a third party's property, not in the applicant's personal custody. He further argued that there is a blatant violation of the mandatory provision of Section 103 of the Cr.P.C., as no independent private witnesses were associated with the recovery and arrest proceedings, despite the alleged incident occurring near a main road in a populated area and all witnesses are police officials subordinate to the complainant. It is contended that the offence, even if taken as proven for the sake of bail arguments, prescribes a maximum punishment of three years, which falls outside the prohibitory clause of Section 497(1) Cr.P.C. Therefore, bail is a rule, and refusal is an exception. Lastly, the learned counsel prayed for allowing the bail to the Applicant.

4. The Learned DPG opposed the bail application, contending that a huge quantity of prohibited betel nuts was recovered on the applicant's pointation. It is further argued that the applicant was caught red-handed loading the contraband for sale, an act injurious to public health. It is further contended that Police officials are competent witnesses, and their testimony cannot be discarded at the bail stage. A prima facie case exists against the applicant, and

he does not deserve the concession of bail. Lastly, the learned DPG prayed for dismissal of bail.

5. I have carefully considered the submissions of learned counsel for the Applicants and the learned Deputy Prosecutor General for the State and undertaken a tentative appraisal of the material available on record, as permissible at the bail stage. The record reflects that the alleged incident is stated to have occurred at a busy location at approximately 08:30 p.m., where it can reasonably be presumed that several persons would have been present. However, no independent or public witness was associated with the search or recovery proceedings, thereby creating doubt regarding the manner in which the alleged recovery was effected. Moreover, the offence with which the applicant stands charged carries a maximum punishment of up to three years' imprisonment and, therefore, does not fall within the prohibitory clause of Section 497(1), Cr.P.C. In such cases, the settled principle of law is that grant of bail is the rule and refusal is an exception, as enunciated by the Honourable Supreme Court of Pakistan in Case of ***Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)***, wherein it was held 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. For the reasons elaborated above, the applicant Abdul Jabbar son of Ghulam Qadir was ordered to be released on bail subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand Only) and 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 19.08.2025. The applicant shall appear before the Trial Court on every date of hearing and shall not seek unnecessary adjournments

7. The observations made hereinabove are tentative and for the purpose of deciding this bail application only. They shall not, in any way, influence the learned Trial Court during the final trial of the case.

JUDGE

Ahmed/Pa,