

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Hasan (Akbar)

Criminal Bail Application No.1423 of 2025

Applicant : Nabeel son of Doshambay
Through Abdul Hafeez, Advocate

Respondent : Through Ms. Rubina Qadir, Addl. P.G,
Sindh and Mr. Qamaruddin,
Deputy Prosecutor General, Sindh

:
Date of hearing : 02.06.2025

Date of order : 02.06.2025

ORDER

Muhammad Hasan (Akbar), J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.160/2025 registered under Sections 8(i) Gutka Mawa Act at P.S Baghdadi Lyari, Karachi, after his bail plea has been recalled by learned Xth Additional Sessions Judge-Malir vide order dated 23.05.2025.

2. The prosecution case, as lodged by the complainant SIP Ghulam Yasin, is that on 16.05.2025 during patrolling on government vehicle he alongwith his sub-ordinate reached at Ali Muhammad Mohalla near B.S.K Project Baghdai Bughdadi Lyari, Karachi one person was packing the Mawa apprehend him and during search in presence of officials recovered 230 piece of material weighting 10 kilogram and 08 packets of first color, the bucket weighing 10 kilogram and a white colored whole body, countless packing material and 20 electric grinder machines made of stainless were recovered from his possession and prepared the mashirnama and lodged FIR against the accused on behalf of the State.

3. Learned Counsel for the Applicant, at the very outset, submits that the applicant is innocent; he has been involved by the police with mala fide intentions; that at present that out of 225 packets only 05 packets were sent for chemical examination to

laboratory. In addition to the above, no private witnesses have been made Mashir as mandatorily required under Section 103 Cr.P.C. The weight as described is also no exact, nor any weighting machine appears to have been used at the time of recovery; that all the witnesses are police officials; that alleged articles were foisted upon the applicant and nothing was recovered from his possession; that the accused is behind bars since his arrest; that no weight of packets mentioned in FIR; that section 8(i) of the Act-2019 are punishable up to three years hence the offence does not fall within the prohibitory clause of section 497, Cr.P.C., hence the applicant is entitled for grant of bail.

4. Learned Addl. P.G Sindh opposed the application on the grounds that, substantial quantity of hazardous material was recovered from the possession of the applicant therefore the applicant is not entitled for the concession of bail; and merely because the offence does not fall within the prohibitory clause of section 497 Cr.P.C. would not automatically entitle the applicant for bail.

5. Heard and perused the record with the able assistance of the learned counsels, which reflects that the alleged recovery was affected within a populated area, yet no private person was associated as witness to the arrest and recovery proceedings and all the witnesses are police officials, and therefore, there appears much lesser apprehension of tempering the evidence by the accused. The challan has been submitted before the court having jurisdiction and investigation of the case is complete therefore, custody of applicant is not required for any further investigation or recovery. Section 8 provides punishment for violation of section 4 of the Act 2019, as up to 03 years, but shall not be less than 01 year, and fine of Rupees two lac, and as per settled principles, lesser sentence is to be considered while deciding the question of bail. In the present case, even if maximum punishment is considered for the sake of argument, it is 03 years, which does not fall within the prohibitory clause of section 497, Cr.P.C., hence grant of bail in such cases is a matter of right for the accused, while refusal is an exception. Reliance in this regard is placed

upon ‘Shaikh Abdul Raheem v. The State’¹ and others, ‘Muhammad Tanveer v. State’², ‘Zafar Iqbal v. Muhammad Anwar’³, ‘Shahmorro v. The State’⁴, and ‘Tarique Bashir v. State’⁵. Moreover, the grounds for denial of bail are, the likelihood of the petitioner's abscondence to escape trial; his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or his repeating the offence keeping in view his previous criminal record. The prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record, as held by Supreme Court in Order dated 05.08.2021 in ‘Muhammad Imran v. The State’. Needless to mention that deeper appreciation of evidence would not be permissible, at the stage of hearing of bail application, as held in ‘Muhammad Eidan v. The State’.

6. Based upon the above tentative assessment of the record, case of further inquiry was made out by the Applicant. Resultantly, the instant Criminal Bail Application is allowed, the applicant is granted bail subject to furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with P.R. bond to the satisfaction of the learned trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE

-
1. 2021 SCMR 822
 2. PLD 2017 SC 733
 3. 2009 SCMR 1488.
 4. 2006 YLR 3167
 5. PLD 199 SC 34
 6. 2022 P.Cr.L.J 143

Hyder/PS