

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Bail Appln.No.S- 746 of 2024.

DATE OF HEARING ORDER WITH SIGNATURE OF HON'BLE JUDGE

- 1.For orders on office objection "A".
- 2.For hearing of bail application.

21.3.2025.

Mr. Muhammad Afzal Jagirani, advocate for the applicant.
Mr. Nazir Ahmed Bangwar, D.P.G for the State.

ORDER

KHALID HUSSAIN SHAHANI J.- By this application, applicant is seeking post arrest bail in a case bearing Crime No.157 of 2024, offence u/s 4 & 8(i) of Sindh Prohibition of Preparation, manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019, P.S Saddar District Jacobabad.

02. As per prosecution theory, on 31.07.2024, police party led by ASI Muneer Ahmed Odho, during snap checking from a Coach bearing registration No.RRT-4742, found 90 bags of Supari, 280 packets Indian Waimal, 268 packets of Indian Ghutka, 164 bundles of Platinum Cigarettes. The applicant being driver and one Akhtar were arrested. Consequently, the case was registered inter alia on above facts.

03. Bail plea on behalf of the applicant was declined by the learned Judicial Magistrate-II, Jacobabad and learned Additional Sessions Judge-II, Jacobabad in Cr. Bail Application No.86/2024 and 880/2024 vide orders dated 17-08-2024 and 07-09-2024, respectively.

04. It is mainly contended by learned counsel that applicant has been falsely implicated by the police by foisting false recovery of material used in Manpuri Mawa Gutka with mala fide and ulterior motives; both the mashirs of recovery and arrest are police personnel and no effort whatsoever was made to arrange private person to associate as mashir, despite venue of occurrence is situated at Bypass road near picket No.9, a public road, where traffic ply round the clock, in violation of the mandatory provisions of section 103 Cr.P.C; all the P.Ws are subordinate to the

complainant, as such, highly interested and the offence does not fall within the ambit of prohibitory clause of section 497(1) Cr.P.C. He has relied upon an unreported case decided by this court vide order dated 13.7.2020 in Cr. Bail Appln. No.S-113 of 2025.

05. Learned DPG for the State records objection for granting bail to the applicant; however conceded that the case does not fall within the ambit of prohibitory clause of section 497(i) Cr.P.C.

06. There is nothing on record to suggest that the alleged recovery was effected from the exclusive possession of the applicant nor did he was found selling or preparing the hazardous/poisonous substance. Alleged recovery of material from the coach driven by applicant is yet to be determined at the trial. Besides prosecution has not claimed the applicant is previously convict or booked in like cases. However, the Offence under Sections 4 and 8(i) of of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 carries punishment with imprisonment which may extend to three years but shall not be less than one year, thus the offence does not fall within prohibitory clause of Section 497(1) Cr.P.C. In such cases, the grant of bail is a rule, whereas refusal is an exception. No exceptional circumstances exist to decline bail. I am also fortified by case reported as Muhammad Tanveer V. The State and another (PLD 2017 SC 733), wherein the Supreme Court of Pakistan observed:

"We are shocked and disturbed to observe that in cases of this nature, not falling within the prohibition contained in section 497, Cr.P.C., invariably grant of bail is refused on flimsy grounds. This practice should come to an end because the public, particularly accused persons charged for such offences are unnecessarily burdened with extra expenditure and this Court is heavily taxed because leave petitions in hundreds are piling up in this Court and the diary of the Court is congested with such like petitions. This phenomenon is growing tremendously, thus, cannot be lightly ignored as precious time of the Court is wasted in disposal of such petitions. This Court is purely a constitutional Court to deal with intricate questions of law and Constitution and to lay down guiding principle for the Courts of the country where law points require interpretation.

07. For what has been discussed above, prima facie applicant has succeeded to make out case for further inquiry, as envisaged u/s 497(II) Cr.P.C. Accordingly, applicant Naimatullah Achakzai is admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/= and P.R bond in the like amount to the satisfaction of the trial Court.

JUDGE

Asghar Altaf/P.A