IN THE HIGH COURT OF SINDH AT KARACHI

Present
Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1916 of 2025

Applicants	:	1. Abdul Qadir S/o Abdul Razzaq 2. Aslam S/o Abdul Sattar through Mr. Muhammad Naseeruddin, Advocate
Respondent	:	The State through Mr. Zahoor Shah, Addl. P.G.
Date of hearing	:	17.09.2025
Date of order	:	26.09.2025

O R D E R

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicants/accused seek post-arrest bail in Crime No.145/2025 for offence under Section 8(i) Gutka Mawa Act of PS Karli, Karachi. Their bail plea has been declined by the learned Additional Sessions Judge-XI, Karachi South [Trial Court] vide order dated 08.07.2025.

2. The facts are incorporated in the FIR as well as in the impugned order and do not need to be reproduced for the purposes of deciding the bail application.

3. It is contended by the counsel for the applicants that the case set up by the prosecution is that as per contents of the prosecution the police has entered into a premises in violation of Section 41 proviso 1 of the Singh Gutka Act and recovered 05 packets containing 1080 Mava Gutka weighing 79 Kg, one sack containing Tobacco 10 packets weighing 19.5 Kg. 22, 10 Packets Kata weighing 10 Kg and other items. He further contends that neither the premises stand in the name of the applicants nor it is alleged by the prosecution that these articles were recovered from the exclusive possession of the applicants. He lastly contends that maximum sentence provided under the law for the purposes of conviction is three years which falls within non-prohibitory clause and grant of bail in such matter is a right and refusal is exception.

4. On the other hand, learned Addl. P.G. states that huge quantity of Gutka has been recovered from the possession of the applicants therefore the applicants are not entitled for bail.

5. I have heard the learned counsel for the parties and with their able assistance perused the record.

6. I have considered the arguments of learned counsel for the applicants that under Section 40(i) of the Sindh Gutka Act, 2019 so also under the procedural law, the police cannot directly enter into the premises on the basis of spy information and suspicion without search warrants from the Area Magistrate. Admittedly, the prosecution has not produced any search warrants that demonstrate that before entering into the premises, the prosecution has obtained search warrants from the Area Magistrate of the alleged apartment where the case property has been recovered. It is settled law that for the purposes of deciding bail, lesser punishment shall be considered. In the present case, maximum punishment provides three years and lesser punishment is one year and law does not give any discrimination about the quantity of contrabands likewise in the Sindh Control of Narcotics Substance Act, 2024. The maximum punishment for selling, preparing and manufacturing of Gutka is three years which make the case of the applicants in non-prohibitory clause in Section 497 Cr.P.C. Further, the challan has been submitted before the trial Court and the accused are no more required for investigation. The prosecution has not shown apprehension that the Applicants if granted bail will damage the case of prosecution or that they would intimidate or influence the prosecution witnesses.

7. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an accused person incarcerated indefinitely while awaiting the

conclusion of trial, especially when such proceedings may culminate either in conviction or acquittal. In the latter scenario, the absence of statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm.

8. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must be assessed independently, with due regard to its peculiar facts and circumstances. The Challan has been submitted before the trial and the Applicant is no more required for investigation. Therefore, no fruitful purpose would be achieved while to keep the Applicant into incarceration for an indefinite period of trial. Even the case is based on documentary evidence in shape of cheques, banks record and the Prosecution has no apprehension that the Applicant, if he is released, he might be damaged or tamper with the prosecution's evidence. The Prosecution has not highlighted circumstances, which would indicate that any exceptions to the aforesaid rule as per the said case laws apply in the present case. Under the facts and circumstances of the case in hand, when an investigation has been completed and challan has been submitted before the trial Court, the Applicant in case, he is freed, he cannot tamper with the prosecution evidence nor is there any prior conviction and no apprehension of absconding has been expressed at all. It does not appear that the Applicant's incarceration would serve the cause of justice.

9. Upon conducting a tentative assessment of the available material and examining the statutory framework, it is evident that the alleged offence does not attract the prohibitory clause of Section 497 of the Criminal Procedure Code. In such circumstances, the considerations for grant of bail are to be governed by the settled principles of law and the exercise of judicial discretion. It is a well-established principle that where the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., the grant of bail becomes a rule and its refusal an exception. This legal position has been consistently affirmed by the Hon'ble Supreme Court of Pakistan in

Tariq Bashir and Others v. The State **(PLD 1995 SC 34) and** ***Muhammad Tanvir v. The State*** **(PLD 2017 SC 733)**.

10. In view of the above, instant bail application is allowed. Accordingly, **applicants Abdul Qadir S/o Abdul Razzaq and Aslam S/o Abdul Sattar** are granted post-arrest bail subject to furnishing solvent surety in the sum of Rs.100,000/- [rupees one lac] each and P.R. bond in the like amount to the satisfaction of the learned trial Court. However, the accused shall not claim the case property until the final disposal of the case and the trial Court shall decide the fate of the case property at the time of evidence whether the same is hazardous or injurious to health.

11. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE

Kamran/PS