

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

Criminal Bail application No.S-965 of 2025

Applicant : Farman Ali s/o Muhammad Akram through
Mr. Sher Muhammad Laghari, advocate.

Respondent : The State, through Mr. Siraj Ahmed Bijarani,
Assistant Prosecutor General, Sindh.

Date of hearing : **10.09.2025**
Date of order : **10.09.2025**

ORDER

TASNEEM SULTANA, J.- The applicant, namely Farman Ali, seeks post-arrest bail in Crime No.32 of 2025, registered at Police Station Berani, District Sanghar, under Sections 5-8(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. His bail plea was earlier declined by the learned Additional Sessions Judge-II, Tando Adam, vide order dated 18.08.2025.

2. Brief facts, as alleged in the FIR, are that on 13.07.2025 complainant ASI Wahid Bux Ujan, along with police officials PC-2175 Ghulam Hussain, PC-3382 Abdul Malik, and driver HC-2360 Muhammad Hayat, left Police Station Berani on Government Vehicle No. SPF-539 for patrol. At about 1950 hours, while checking vehicles near Timor road bypass, one white car appeared around 2000 hours. The police signaled the car to stop, upon which two occupants fled while the driver was apprehended, who disclosed his name as Farman Ali. On his personal search, currency of Rs.500 was recovered. On checking the car, four white-colored polythene bags (kattas) were found. From the first bag 40 packets containing 100 sachets each, from the second 45 packets containing 160 sachets each, from the third 50 packets containing 110 sachets each, and from the fourth 39 packets containing 110 sachets each were recovered, making a total of 14,740 packets of Gutka. The car, Alto bearing registration No. BUG-258, was also taken into custody. Due to non-availability of public mashirs, PC Ghulam Hussain and PC Abdul Malik acted as mashirs. Out of 134 packets counted, one was separated, five sachets were sealed for chemical examination, and the remaining bags were separately sealed. The recovered property along with the accused was brought to the police station where present FIR was lodged.

3. Learned counsel for the applicant contended that the alleged offence do not fall within the prohibitory clause of Section 497 Cr.P.C., as maximum punishment provided therein is three years; that there exist no reasonable grounds to believe that the applicant committed the alleged offence; that the case rests on police witnesses only, who are interested and subordinate officials; that FIR is delayed by two hours without explanation, rendering it doubtful; that no independent mashir was associated, which diminishes credibility; that the applicant has remained in custody since 13.07.2025; that the delay in lodging FIR and absence of independent corroboration creates doubt, which must go in favour of the accused at bail stage. It is further contended that applicant is neither a hardened nor previous convict, hence his case falls within the scope of "further inquiry" under Section 497(2) Cr.P.C. Reliance is placed on 2022 PCrLJ 143 (*Muhammad Eidan versus The State*) and 2022 PCrLJ Note 118 (*Abdul Aziz versus The State*).

4. Conversely, learned Assistant Prosecutor General opposed the instant bail application, and contended that huge recovery of Gutka was effected from the vehicle driven by the applicant, his name is specifically mentioned in FIR; that the offence under the Gutka and Manpuri Act affects the society at large; that no malafide is attributable to the police for false implication.

5. Heard and record perused.

6. It is manifest from the record that the recovery was allegedly effected from the vehicle and not from the exclusive person or possession of the applicant. Whether such recovery can legally be attributed to the applicant is a matter that requires determination by the trial Court after recording of evidence. At this stage, the Court is not expected to enter into deeper appreciation of evidence but only to assess whether reasonable grounds exist for believing that the accused is connected with the commission of the alleged offence. The absence of any independent mashir from the locality, despite the occurrence at a public place, calls for further inquiry into the prosecution case.

7. The investigation in the case has been completed, and challan has already been submitted before the competent Court. Hence, the continued detention of the applicant would serve no useful purpose, particularly when there is no apprehension of tampering with prosecution evidence, which primarily comprises of police witnesses.

8. It is also relevant to note that the maximum punishment provided under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 is three years, while the minimum

punishment is one year with fine. Offences carrying such sentence do not fall within the prohibitory clause of Section 497, Cr.P.C. It is a well-recognized principle that while considering bail, the Court must take into account the lesser punishment prescribed for the offence. This Court in *Shehzore's case (2006 YLR 3167)* allowed bail on such consideration, and the Honourable Supreme Court in *Tarique Bashir v. State (PLD 1995 SC 34)* has held that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal an exception.

9. Keeping in view the tentative assessment of the material so far available, coupled with the doubtful circumstances surrounding the recovery proceedings and the lesser sentence prescribed, the case of the applicant squarely falls within the ambit of further inquiry under Section 497(2), Cr.P.C. Hence, the applicant has succeeded in making out a case for grant of post-arrest bail. Resultantly, this bail application is allowed and the applicant is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- and PR bond in the like amount to the satisfaction of Trial Court.

10. Needless to mention that observations made hereinabove are tentative and shall not prejudice the learned Trial Court at the stage of trial.

J U D G E

Irfan Ali