

## **THE HIGH COURT OF SINDH AT KARACHI**

### **Criminal Bail Application No.2753 of 2025**

Applicant : Muhammad Irfan son of Muhammad Moosa through Mr. Muhammad Yousuf Narejo, Advocate

The State : Ms. Ms. Seema Zaidi, Additional Prosecutor General, Sindh

Date of hearing : 17.11.2025

Date of decision : 17.11.2025

### **O R D E R**

**Jan Ali Junejo, J.**.- Through this Criminal Bail Application filed under Section 497 Cr.P.C., the applicant Muhammad Irfan seeks his release on post-arrest bail in Crime No. 797/2025 registered under Section 4, 8(1) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. His earlier bail plea was declined by the learned Additional Sessions Judge-VIII, Malir, Karachi vide order dated 30.09.2025.

2. According to the FIR lodged on 13.09.2025 by SIP Mumtaz Ali, the police during routine patrolling allegedly intercepted a white Alto car on the pointation of a spy informer near Gaddap Road towards Super Highway and apprehended the applicant. From the vehicle, the police allegedly recovered: 08 sacks of wetted betel nuts, weighing 96 kilograms, 03 kilograms of readymade Manpuri, from the rear seat. The applicant was arrested on the spot and the material was seized.

3. Learned counsel for the applicant argues that the applicant is innocent and has been falsely implicated in the present case, while the alleged recovery has been foisted upon him. He further argues that no private witness was associated at the time of the alleged recovery despite the availability of independent persons at a public place, namely Super Highway, in violation of the mandatory provisions of Section 103, Cr.P.C. He further contends that all the prosecution witnesses are police officials, who are subordinate to the complainant, which casts serious doubt upon the prosecution version and requires independent corroboration. He

further argues that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C., therefore, bail is a rule and refusal is an exception. He also submits that the maximum punishment provided under Section 8(1) of the Act is three years, which is less than ten years' imprisonment. He further argues that the case calls for further inquiry, particularly with regard to actual possession, ownership of the alleged vehicle, and the safe custody and chain of transmission of the alleged contraband. Lastly, he submits that the applicant is a first-time offender, belongs to a respectable family, and there is no likelihood of his absconding or tampering with the prosecution evidence, and finally prays for grant of bail.

4. On the other hand, the learned Additional Prosecutor General vehemently opposes the bail application and argues that the recovery effected from the possession of the applicant is substantial in nature, that the applicant was apprehended red-handed at the spot, and that the recovered contraband is highly injurious to public health. However, she candidly concedes that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C. She further argues that there are sufficient grounds to believe that the applicant has committed a non-bailable offence and, therefore, he does not deserve the concession of bail. Lastly, she prays for dismissal of the bail application.

5. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties and has examined the available record with utmost care and circumspection. On a tentative assessment of the material placed on record, it appears that, besides the alleged recovery of 03 kilograms of ready-made Manpuri, 08 sacks of wetted betel nuts, weighing 96 kilograms, were also allegedly recovered from the possession of the applicant. The definition of "gutka" and "manpuri" as provided under Section 2(viii) of the Sindh Prohibition of Gutka and Manpuri Act, 2019, is reproduced herein below:

***"(viii) 'gutka' and 'manpuri' means— (a) any mixture which contains any of the forms of chalia (betel nut), catechu, tobacco, lime and other materials as its ingredients which is injurious to health and not fit for human consumption within the meaning of Section 5 of the Sindh Pure Food Ordinance, 1960 and is also in contravention of Rule 11 of the Sindh Pure Food Rules, 1965;***

***(b) any substance prepared for human consumption and which poses a serious threat to the health of the people and includes such substances as the Government may, by notification in the official Gazette, declare to be such substances."***

A careful reading of the aforesaid definition makes it abundantly clear that mere recovery of betel nut simpliciter does not ipso facto fall within the mischief of "gutka" or "manpuri" as contemplated under the Act, 2019. Rather, the statute explicitly requires that the recovered substance must be a mixture containing forms of chalia (betel nut), catechu, tobacco, lime and other materials as its ingredients, and further that such mixture must be injurious to health and not fit for human consumption within the meaning of Section 5 of the Sindh Pure Food Ordinance, 1960, and also be in contravention of Rule 11 of the Sindh Pure Food Rules, 1965. Additionally, the definition further requires that the substance must be prepared for human consumption and pose a serious threat to the health of the people, or be one which the Government has specifically notified in the official Gazette to be such prohibited substance. In the present case, at this tentative stage, no material is available on record to establish that the allegedly recovered wetted betel nuts constituted the requisite prohibited mixture, nor is there any chemical analysis report demonstrating that the same was injurious to health, unfit for human consumption, or in violation of the relevant food laws. Likewise, no notification has been pointed out whereby the recovered substance has been declared prohibited under the Act. This conspicuous absence of foundational material gives rise to a reasonable doubt regarding the applicability of the penal provisions, thereby attracting the rule of further inquiry within the contemplation of Section 497(2), Cr.P.C.

6. Besides that, the maximum punishment prescribed under Section 8(1) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, is three years' imprisonment; therefore, the alleged offence is neither punishable with death nor with imprisonment for life nor with imprisonment exceeding ten years, and, as such, squarely falls outside the prohibitory clause of Section 497, Cr.P.C. The Honourable Supreme Court of Pakistan, in the case of ***Tariq Bashir v. The State (PLD 1995 SC 34)***, and in a catena of subsequent judgments, has consistently held that in offences falling outside the prohibitory clause, grant of bail is a rule and refusal is an exception, unless exceptional circumstances exist, such as likelihood of absconcence, misuse of the concession of bail, or the possibility of tampering with prosecution evidence. No such exceptional circumstance has been demonstrated by the prosecution in the present case. Admittedly, the alleged recovery was effected on a busy public road, namely the Super Highway; however, despite the availability of independent persons, no private Mashir was associated in the recovery proceedings. The recovery and arrest Mashirnames were prepared solely

in the presence of police officials, who are admittedly subordinate to the complainant. Though such an omission may not be fatal to the prosecution case at the trial stage, it does raise a legitimate doubt at the bail stage. Consequently, the defence plea of foisting cannot be outrightly disregarded at this tentative stage.

7. In light of the above discussion, particularly the non-association of private Mashirs, recovery proceedings conducted solely by police officials, the offence not falling within the prohibitory clause, the absence of exceptional circumstances warranting refusal of bail, and the applicability of the further inquiry clause under Section 497(2), Cr.P.C., I am of the considered view that the applicant has been able to make out a *prima facie* case for the grant of post-arrest bail.

8. For the foregoing reasons, the present Criminal Bail Application is allowed. The applicant/accused, Muhammad Irfan son of Muhammad Moosa, is admitted to post-arrest bail in FIR No. 797/2025 under Section 8(1) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, registered at Police Station Gadap City, Karachi, subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court.

9. The observations herein are tentative and confined to the decision of bail. The trial Court shall not be influenced thereby and shall adjudicate strictly on the evidence led before it. These are the detailed reasons of the Short Order dated: 17-11-2025.

**JUDGE**

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