

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2847 of 2025

Applicant : Abdul Jabbar, through
Mr. Samiullah Panhwar Advocate.

Respondent : The State through Mr. Muhammad
Noonari, D.P.G.

Date of hearing : 06.05.2026.

Date of order : 06.05.2026.

ORDER

TASNEEM SULTANA, J:— Through this Criminal Bail Application, the applicant/accused Abdul Jabbar seeks post-arrest bail arising out of FIR No.732/2025 registered under section 8A(i) Gutka & Mawa Act, 2019 and sections 269, 270 PPC at Police Station Malir City, Karachi. Earlier, his post-arrest bail application No.25 of 2025 was dismissed by the learned Judicial Magistrate-V, Malir Karachi vide order dated 23.09.2025. Subsequent thereto, another post-arrest bail application No.4476/2025 dismissed by learned Additional Sessions Judge-III, Malir Karachi vide order dated 29.09.2025. Hence, the present application for the same concession.

2. The details and particulars of FIR are already available in the bail application and FIR. Same could be gathered from the copy of FIR attached with the bail application, hence need not to produce hereunder.

3. Learned counsel for the applicant/accused has contends that the applicant/accused is innocent and has falsely been implicated in this case with malafide intention; that alleged recovery has been foisted upon him and despite alleged recovery having been effected from a thickly populated area, no private mashir was associated in the proceedings and all mashirs are police officials; that the applicant/accused has no concern with alleged recovered contraband and even otherwise ordinary

betel nuts/chalia are not prohibited under the Sindh Gutka & Mawa Act, 2019 unless used in prohibited mixture; that the alleged offence does not fall within prohibitory clause of section 497 Cr.P.C. and maximum punishment provided under the law is up to three years; that challan has already been submitted and the applicant/accused is no more required for further investigation. He lastly contended that the case of the applicant/accused falls within the ambit of further inquiry as contemplated under section 497(2) Cr.P.C. and prayed for grant of post-arrest bail.

4. Conversely learned D.P.G for the State has vehemently opposes the grant of post-arrest bail to the applicant/accused and submits that representative samples drawn from the alleged recovered contraband were sent to the Director Laboratories & Chemical Examiner to the Government of Sindh, Karachi, the report is in positive and unfit for human consumption. He therefore prays for dismissal of the instant bail application.

5. Heard. Record perused.

6. It reveals that according to the prosecution case, the applicant/accused Abdul Jabbar was allegedly apprehended while driving vehicle bearing No.BJH-712 whereas co-accused Syed Zafar Hussain allegedly escaped from the spot and the said vehicle admittedly stands in the name of co-accused Muhammad Ajmal, who has also been booked in the present case.

7. It further appears from the record that police allegedly recovered three bags of prepared gutka and 45 bags of betel nuts/chalia from the said vehicle and thereafter two representative samples of 250 grams (each) were forwarded to the chemical examiner for analysis. The chemical examiner's report dated 17.10.2025 reflects that one sealed parcel contained "Mawa Gutka" and another sealed parcel contained betel nuts and during test performed the same were found infest, debris, fungus.

8. So far the learned counsel for the applicant/accused's contention that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., grant of bail is a rule and refusal is an exception. It is correct

that the alleged offence does not fall within prohibitory clause of Section 497 Cr.P.C. and is the maximum punishable up to three years R.I and ordinarily in such like cases grant of bail is a rule and refusal is an exception. The legislature had intentionally kept this offence as non-bailable, and it has consistently been held by this Court as well as the Hon'ble Supreme Court of Pakistan that in non-bailable offences grant of bail is not the right of an accused and it is a concession. Reference may well be made to the case of Shameel Ahmed Vs. The State (2009 SCMR 174) wherein the Hon'ble Supreme Court of Pakistan has held that: -

“Grant of bail to an accused in every case not hit by the prohibitory clause of S.497(1), Cr.P.C., was not a rule of universal application, because each case had to be dealt with on its own facts and circumstances. Court vested with such discretion could not exercise the same in an arbitrary, fanciful or perverse manner. If an order granting the bail had been obtained by accused after suppressing the details of vital importance, the same could be cancelled by the Court which had passed it. Accused being involved in three previous cases of similar kind was, prima facie, found to be a habitual offender of issuing cheques and defrauding the people.”

9. In another case of Mehmood Siddique Vs. Imtiaz Begum and two others (2002 SCMR 442) wherein the Hon'ble Supreme Court of Pakistan held that: -

“4.....None can claim that bail as of right in non- bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”

10. Admittedly, challan has already been submitted, and chemical examiner's report has also been received wherein the recovered samples were found hazardous and unfit for human consumption. Prima facie, the material available on record sufficiently connects the applicant/accused with the commission of alleged offence and no malafide on the part of police officials has been established at this stage. Mere fact that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. would not automatically entitle the applicant/accused to concession of bail particularly when each case has to be decided on its own facts and circumstances. At this stage, no case

for further inquiry within the meaning of section 497(2) Cr.P.C. is made out in favour of the applicant/accused.

11. In view of the above, learned counsel for the applicant/accused has failed to make out a case for grant of post-arrest bail to the applicant/accused. Resultantly, the instant bail application merits no consideration, which is dismissed accordingly.

12. 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 applicant on merits.

JUDGE