

# THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Bail Application No. 1555 of 2026**

Applicant : Asmatullah S/o. Naimatullah  
Through Mr. Aamir Shahzad,  
advocate

The State : Mr. Sharafuddin Kanhar, Assistant  
Prosecutor General, Sindh a/w  
Ms. Rukhsana Mirjat, ADPP.

Date of hearing : 15.06.2026.

Date of Order : 15.06.2026.

### **ORDER**

**Jan Ali Junejo, J:--** Through the instant application under Section 497, Cr.P.C., the Applicant Asmatullah son of Naimatullah seeks post-arrest bail in Crime No.160 of 2026, registered at Police Station Tipu Sultan, Karachi, for offence under Section 8(1) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mawa Act, 2019 ("the Act"), after his similar plea was declined by the learned Additional Sessions Judge-X, Karachi South, vide order dated 18.05.2026.

2. Briefly stated, the prosecution story is that on 11.04.2026 at about 12:00 pm., Inspector Muhammad Asif posted at Police Station Tipu Sultan, Karachi East, along with subordinate staff and Government Mobile No. SPE-491, was engaged in routine patrolling within the jurisdiction for the prevention of crime. During patrol, a spy informer informed him that a person who had unloaded bags/sacks from a rickshaw was present near Chishtia Masjid, Baloch Para, Karachi, along with the said bags/sacks. Acting upon this information, he, along with his subordinate staff, proceeded to the pointed-out location at about 1200 hours, where, on the identification of the spy informer, one person and eleven bags/sacks were found. The person was apprehended with the assistance of

subordinate staff and, upon inquiry, disclosed his name as Asmat Ullah son of Naimat Ullah. Due to the non-availability and non-cooperation of private witnesses, his personal search and the search of the bags were conducted in the presence of subordinate staff. Upon checking, Bag No.1 contained 195 pouches, Bag No.2 contained 165 pouches, Bag No.3 contained 278 pouches, Bag No.4 contained 170 pouches, Bag No.5 contained 200 pouches, and Bag No.6 contained 180 pouches of Mava Gutka, a substance injurious to health, making a total of 1,188 pouches. The remaining five bags were found to contain betel nuts used in the preparation of Mava Gutka. Upon weighing through a digital scale, Bag No.7 contained 15 kg, Bag No.8 contained 18 kg, Bag No.9 contained 15 kg, Bag No.10 contained 16 kg, and Bag No.11 contained 15 kg of betel nuts, totaling 79 kg. During the personal search of the accused, cash amounting to Rs.520/- was recovered. The act of the accused constituted an offence punishable under Section 8-A(i) of the Mava Gutka Act, 2019; he was arrested at the spot under a proper memo. From the recovered Mava Gutka, 12 pouches were separated as samples for chemical examination, while the remaining 1,176 pouches were sealed separately in 60 packets. Likewise, from the recovered betel nuts, 500 grams were separated as samples for chemical examination, while the remaining 78.500 kilograms were sealed separately. Thereafter, upon returning to the police station, the accused was lodged in the lock-up, and FIR under Section 8-A(i) of the Mava Gutka Act, 2019 was registered against him, hence, this FIR.

3. Learned counsel for the applicant contended 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 contends that no incriminating articles were recovered from the exclusive possession of the applicant and that the prosecution case is inherently doubtful, as neither the FIR nor the recovery memo specifies the colour, shape, or other distinguishing particulars of the alleged recovered items. He further argues that the entire prosecution story is fabricated and unsupported by any

independent evidence, as the case rests solely upon the statements of police officials, which require strict scrutiny during trial. Learned counsel also points out that no private witness was associated with the alleged recovery proceedings despite the mandate of Section 103, Cr.P.C., thereby casting serious doubt upon the prosecution version. He submits that the learned courts below failed to appreciate these material aspects and dismissed the bail applications mechanically. Lastly, he contends that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C., and as the case calls for further inquiry, the applicant is entitled to the concession of bail, which is the rule and not the exception.

4. Conversely, the learned Assistant Prosecutor General opposes the bail applications, contending that the Applicant was apprehended redhanded with huge quantity of Gutka/Mawa and raw materials, and the recovery was duly documented in accordance with law. He argues that such offences pose a serious threat to public health and granting bail in such cases would encourage habitual violators and undermine the enforcement of the prohibition law. He further submits that sufficient material is available on record to connect the Applicant with the commission of the alleged offence. Lastly, he prays for dismissal of the bail applications.

5. I have heard the arguments advanced by the learned counsels for the Applicants and the learned Assistant Prosecutor General for the State, and have examined the material available on record with a tentative assessment, as permissible at this stage of bail. Despite the recovery allegedly taking place in a public locality, no private witness was joined. The prosecution relies entirely upon official witnesses who are both complainant and seizing party.

6. Section 8(1) of the Act of 2019, under which the applicant has been booked, provides that whoever contravenes the provisions of Sections 3, 4, 5, 6, and 7 of the Act of 2019 shall be punishable with imprisonment that may extend to three years, but shall not be less

than one year, and shall also be liable to fine which shall not be less than Rs.200,000/-.

7. To invoke the provisions of Sections 3, 4, and/or 5 *ibid*, the mixture or substance must fall within the following definitions of “derivative” and “gutka and manpuri”, mentioned in clauses (vi) and (vii), respectively, of Section 2 of the Act of 2019:

*“(vi) “derivative” means any mixture under any name viz. panparag, gutka, or such other mixture which is prepared or obtained by any series of operations from the ingredients as given in clause (vii).” “(vii) “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 to the provisions of rule 11 of the Sindh Pure Food Rules, 1965 ; (b) any substance prepared for human consumption and is posing a serious threat to the health of people and includes such substances as the Government may, by notification in the official Gazette, declare to be such substances.”*

8. Perusal of the above-mentioned provisions of the Act of 2019 shows that to invoke the provisions of Sections 3, 4, and/or 5 *ibid*, it is necessary for the prosecution to show that there was a “mixture” or “substance”, as defined in clauses (vi) and (vii) of Section 2 of the Act of 2019, and the accused was involved in the production, preparation, manufacture, sale, distribution, delivery, import, export, transportation and/or dispatch thereof.

9. The question of whether or not the above-mentioned items allegedly recovered from the applicants/accused were to be used as the raw material for preparing the mixture of any of the derivatives or substances defined in the Act of 2019, requires further inquiry in my opinion. It will be for the learned trial Court to decide the matter purely on the evidence produced before it.

10. The offense alleged against the applicants does not fall within the prohibitory clause of Section 497 Cr.P.C. Besides alleged recovery was affected from the populated area and the complainant

has advance information regarding the presence of the applicant at the pointed place but no private person was associated as a witness or mashir either from the place of incident or from the place of information.

11. Because of the above factual and legal position, the applicant is found entitled to the relief of bail under to Section 497(2) Cr.PC.

12. For the reasons discussed above, the applicants have succeeded in making out a case for the concession of post-arrest bail. Accordingly, this Criminal Bail Application is allowed, and the applicant namely *Asmatullah son of Naimatullah* is admitted to post-arrest bail subject to his furnishing surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and confined solely to the purpose of this Order. It shall not prejudice or influence the learned trial Court while deciding the case on merits.

These are the detailed reasons for the short order dated 15.06.2026.

**JUDGE**