

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Cr. Bail Application No. S-336 of 2026

Applicant: Doulat Kumar s/o Luno, Malhi.
Through Mr. Sikandar Ali Kolachi, Advocate.

Cr. Bail Application No. S-337 of 2026

Applicant: Khuda Bux s/o Darya Khan, Samejo.
Through Mr. Om Parkash H. Karmani, Advocate.

The State: *Through* Mr. Neel Parkash, D.P.G.

Date of Hearing: 22.07.2026

Date of Order: 22.07.2026

ORDER

Khalid Hussain Shahani, J. — Applicant Khuda Bux seeks pre-arrest bail, while applicant Doulat Kumar seeks post-arrest bail, in a case bearing crime No.146/2026 registered at P.S. Umerkot City for offences punishable under Sections 4, 5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Store, Sale and Use of Gutka and Mainpuri Act, 2019. Both applications follow the dismissal of the applicants' bail plea by the learned trial court vide order dated 17.06.2026, thereby invoking the concurrent jurisdiction of this Court.

2. As per the narrative set out in F.I.R No.146/2026, lodged on 09.06.2026 at 0930 hours, police patrolling party, while discharging routine duties within the territorial jurisdiction of P.S. Umerkot City, chanced upon a motorcycle bearing two occupants together with two white sacks of suspicious bulk. Upon sighting the police, the rider is alleged to have attempted evasive flight; a chase ensued, culminating in the apprehension of accused Doulat Kumar along with the sacks, while co-accused Khuda Bux alias Khudiyo successfully eluded capture. A search of the recovered sacks purportedly yielded 50 packets of "Adab Gutka" (5,000 pouches) and

50 packets of "Safina Gutka" (5,500 pouches). Representative samples were drawn for chemical analysis, the residual case property was sealed in the customary manner, and accused Doulat Kumar was placed under arrest, the prosecution's case being that the applicants held the contraband gutka with the specific intent of sale and distribution, thereby precipitating the registration of the instant F.I.R.

3. Learned counsel appearing for the applicants have argued with considerable force that no incriminating article was, in fact, recovered from the personal possession of the applicants, and that the case property has been deliberately foisted upon them. It is further contended that the entirety of the prosecution witnesses are police officials, whose testimony must necessarily await the crucible of trial; that the mandatory safeguards of Section 103 Cr.P.C. were flagrantly disregarded; and that the investigation having reached its terminus, applicant Doulat Kumar's continued incarceration serves no discernible purpose. On this composite foundation, learned counsel have pressed for the grant of bail.

4. Learned D.P.G. for the State, appearing in opposition, has resisted the applications and urged their dismissal.

5. I have heard learned counsel for the respective applicants and learned D.P.G. for the State at considerable length, and have subjected the record to careful scrutiny.

6. It is not disputed that the alleged offence falls outside the prohibitory embargo of Section 497 Cr.P.C., and it is by now well-settled, as authoritatively enunciated by the Hon'ble Supreme Court of Pakistan in *Muhammad Tanveer* (PLD 2017 SC 733) that in offences of this character, the grant of bail constitutes the rule, and its refusal the exception. A tentative appraisal of the material on record discloses that the

alleged recovery is stated to have been effected from a populated locality, yet no independent or private witness was associated with the recovery proceedings; the *mashirs*, without exception, are all police functionaries. This circumstance, prima facie, brings the matter squarely within the ambit of "further inquiry" contemplated under Section 497(2) Cr.P.C. It is equally manifest that Section 103 Cr.P.C., which imperatively mandates the association of independent witnesses at the time of search and seizure, was honored in its breach. Compounding this infirmity, the entire search, seizure, and arrest proceedings were conducted by ASI Mangho Mal, an officer admittedly ranking below Sub-Inspector without any material placed on record demonstrating due authorization by the Home Department as mandated under Sections 14 and 18 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019. The legality and sanctity of the search and seizure proceedings, therefore, stand shrouded in prima facie doubt, and their resolution demands a deeper appreciation of evidence, an exercise impermissible at the bail stage. It is further noteworthy that the investigation has since culminated in the submission of the report under Section 173 Cr.P.C., and the applicants are no longer required for further investigative purposes. In these circumstances, no salutary purpose would be advanced by subjecting applicant Doulat Kumar to continued and indefinite incarceration.

7. In light of the foregoing analysis, the interim pre-arrest bail earlier granted to applicant Khuda Bux is hereby confirmed on the same terms and conditions as originally imposed. The post-arrest bail application of applicant Doulat Kumar is allowed, and he shall be released on furnishing a solvent surety in the sum of Rs.30,000/- together with a P.R. Bond in the like amount, to the entire satisfaction of the learned trial court.

8. It is clarified that the observations recorded hereinabove are strictly tentative in character and shall not be construed as prejudicing the case of either party at the trial.

The applications stand disposed of accordingly.

JUDGE

Faisal