

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.815 of 2026

Applicant : Samad Ali, Through: Mr. Shahrukh Khan Brohi, Advocate.

The State : The State: Through: Mr. Mumtaz Ali Shah, A.P.G., Sindh

Date of hearing : 19.03.2026

Date of Order : 19.03.2026

ORDER

Jan Ali Junejo, J:-- Through this criminal bail application filed under Section 497 Cr.P.C., the applicant/accused Samad Ali seeks post-arrest bail in case FIR No. 67/2026, registered at Police Station Malir Cantt, Karachi, for an offence punishable under Section 8(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale & Use of Gutka & Manpuri Act, 2019. The applicant is aggrieved by the order dated 27.02.2026 passed by the learned Additional Sessions Judge-III, Malir, Karachi, whereby his bail application was declined.

2. As per contents of the FIR, on 11.02.2026, SIP Ali Nawaz along with police staff, during patrol duty, allegedly received spy information regarding preparation of gutka/mawa at an empty Plot situated at Dhani Bux Goth near Kamal Shah Hardware Shop, Malir Cantt. Acting upon such information, the police party conducted a raid at about 03:15 hours and allegedly found five persons at the spot, out of whom two including the present applicant were apprehended while three managed to escape. It is alleged that substantial quantity of prepared gutka/ mawa along with raw material and packing items

were recovered from the said vacant plot. The applicant was arrested at the spot and FIR was registered accordingly.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in this case. He argued that no recovery has been effected from the personal possession of the applicant and the alleged recovery was made from an open and accessible place, which cannot be attributed to the applicant without proof of conscious possession. It was further contended that no independent mashirs were associated despite the alleged place being in a populated locality, thus creating doubt in the prosecution case. He also submitted that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C., and the case of the applicant falls within the ambit of further inquiry. Learned counsel further argued that co-accused Hasnain has already been granted bail, therefore, the case of the applicant is covered under the rule of consistency. Lastly, he prayed that the applicant be admitted to post-arrest bail.

4. On the other hand, learned Assistant Prosecutor General opposed the bail application and submitted that the applicant was apprehended at the spot during raid and a huge quantity of gutka/mawa along with manufacturing material was recovered, which prima facie connects the applicant with the commission of offence. He contended that the offence relates to public health and cannot be taken lightly. It was further argued that the case of the applicant is distinguishable from that of co-accused who was

granted bail, as he was not arrested at the spot. He, therefore, prayed for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the record with their able assistance. Admittedly, the offence alleged against the applicant does not fall within the prohibitory clause of Section 497 Cr.P.C. It is a settled principle of law that in such cases, bail is a rule and refusal is an exception, unless there exist reasonable grounds to believe that the accused is guilty of the offence. Perusal of record reflects that the alleged recovery has been effected from a vacant plot, which prima facie appears to be an open and accessible place. No material has been placed on record at this stage to establish exclusive possession or control of the applicant over the said premises. The question whether the applicant was in conscious possession of the recovered articles requires deeper appreciation of evidence, which can only be undertaken at trial. It is also noted that no independent mashirs from the locality were associated by the police at the time of alleged recovery, despite availability, and the mashirnama has been prepared by police officials themselves. Though such omission is not always fatal, yet it creates a dent in the prosecution case, particularly at bail stage. Furthermore, nothing incriminating has been recovered from the personal search of the applicant except a mobile phone. The prosecution case mainly rests upon official witnesses and documentary evidence, which can be tested during trial. Another significant aspect is that co-accused Hasnain has already been granted bail by the competent court. Although his case is stated to

be distinguishable, yet the overall circumstances indicate that the case of the present applicant also calls for further inquiry within the meaning of Section 497(2) Cr.P.C. At this tentative stage, without touching the merits of the case, it appears that sufficient grounds exist to extend the concession of bail to the applicant. In the case of *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)*, the Honourable Supreme Court of Pakistan held as follows: *“There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C, bail is granted as a rule and refusal is an exception. Disregard of this cardinal principle of bail jurisprudence warrants serious judicial introspection”*.

6. For the foregoing reasons, this bail application is allowed. The applicant/accused Samad Ali is admitted to post-arrest bail in FIR No. 67/2026, subject to furnishing solvent surety in the sum of Rs. 200,000/- (Rupees Two Lac only) and a personal recognizance bond in the like amount to the satisfaction of the learned trial Court. It is, however, clarified that all observations hereinabove are purely tentative and confined to the adjudication of the present bail application. Nothing stated in this Order shall be construed as an opinion on the merits of the case, and the trial Court shall proceed

independently, uninfluenced by any observations contained herein.

These are the detailed reasons for the short order dated 19.03.2026.

JUDGE