

# HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Bail Application No.S-227 of 2026

(Sawai @ Sooraj v. The State)

Applicant by : Mr.Muhammad Azhar Arain, Advocate

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

Date of hearing : 19.05.2026

Date of Order : 19.05.2026

## ORDER

ARBAB ALI HAKRO, J.: The applicant seeks his release on post-arrest bail in Crime No.26 of 2026 registered at Police Station Nabisar Road under Sections 3, 4, 5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. His earlier pleas for bail (Criminal Bail Application No.29 of 2026) and (Criminal Bail Application No.334 of 2026) were declined by the learned Civil Judge and Judicial Magistrate-I, Kunri and learned Sessions Judge, Umerkot, vide orders dated 28.04.2026 and 06.05.2026, whereafter he invoked the jurisdiction of this Court.

2. The prosecution case, as narrated in the FIR, is that the police party during patrolling received spy information and proceeded to the applicant's shop, wherefrom a very large quantity of gutka, mawa, supari and related raw material was recovered. The FIR records that "we checked the shop and recovered 10 sacks of Sooden Supari, *Shah Nawaz Gutka 97 packets... Janab Gutka 25 packets... Chandni Gutka 07 packets... wooden Supari weighing 120 kilograms... Chuna weighing 25 kilograms*". The applicant was allegedly present inside the shop and attempted to flee but was apprehended on the spot.

3. The chemical examiner's report, now available on record, confirms that the representative samples of the recovered sachets contain hazardous and carcinogenic material. The report states that the sachets "contain hazardous material that can cause cancer, therefore *unfit for human consumption*".

4. Learned counsel for the applicant has argued that the FIR is false, that no private mashir was associated despite the recovery being made in a populated area, that the shop does not belong to the applicant, that the recovery is foisted, and that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. In support of his contentions he relied upon case law reported as 2024 SCMR 934, PLD 1995 Supreme Court 34, 2026 MLD 735, 2025 YLR 2803, 2023 YLR Note 14, 2022 P Cr. LJ Note 37, 2022 YLR Note 79, 2022 P Cr. LJ 143, 2021 P Cr. LJ 509, 2020 MLD 847 and 2008 P Cr. LJ 754.

5. Learned D.P.G for the State, on the other hand, has opposed the bail application and submitted that the recovery is of commercial scale, the applicant was present at the spot, the chemical report is positive and the CRO reflects previous involvement of the applicant in a same-nature case. It is argued that the case falls within the recognised exceptions where bail may be refused even in non-prohibitory offences.

6. The argument regarding violation of section 103 Cr.P.C. does not, at this stage, create any dent in the prosecution case. The Supreme Court has consistently held that non-association of private mashirs is not fatal at the bail stage unless concrete mala fides are shown. Mere absence of private witnesses, particularly in cases involving contraband, does not by itself render the recovery doubtful. The applicant has not placed any material to demonstrate specific enmity or mala fide on the part of the police.

7. The defence case law relied upon by learned counsel is distinguishable on facts. The Supreme Court in several judgments has held that although grant of bail in non-prohibitory offences is a rule, refusal is justified where the case falls within recognised exceptions, such as likelihood of repetition of the offence, antecedents of the accused or the nature of the act being harmful to society at large. The offences which endanger public health and involve organised commercial activity may constitute exceptional circumstances warranting refusal of bail.

8. The present case squarely attracts these exceptions. The recovery is of massive commercial quantity; the applicant was allegedly present in the shop and attempted to escape; the chemical report confirms carcinogenic content and the CRO reflects previous involvement in a similar case. These factors, taken together,

prima facie indicate that the applicant is not a casual or first-time offender but is engaged in a continuing trade of hazardous substances. The offence is not merely against an individual but against public health and society at large.

9. In such circumstances, the mere fact that the offence does not fall within the prohibitory clause does not automatically entitle the applicant to bail. The discretion under section 497 Cr.P.C. must be exercised judiciously, keeping in view the nature of the offence, the antecedents of the accused and the potential harm to the community. On the material available, I am not persuaded that the case falls within the ambit of further inquiry.

10. For these reasons, I am of the tentative view that the applicant has failed to make out a case for the grant of post-arrest bail. The bail application is accordingly dismissed. The learned trial Court is directed to decide the case within one month.

11. The observations made herein are tentative in nature and shall not prejudice either party at trial.

JUDGE

\*Adnan Ashraf Nizamani\*