

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Cr. Bail Application No. 1067 of 2023**

Applicant : Arif Jan s/o. Hilal Jan, through  
Mr. A. K. Brohi, Advocate.

Respondent : The State, through Ms. Rahat Ehsan,  
Additional Prosecutor General.

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Date of hearing : 07.06.2023  
Date of order : 07.06.2023  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant Criminal Bail Application, applicant/ accused Arif Jan s/o. Hilal Jan seeks post-arrest bail in Crime No. 92 of 2023 registered at P.S. Kharadar, Karachi under sections 336-B, 337-J, 34, P.P.C. His earlier application for the same relief in Sessions Case No. 1350 of 2023 was dismissed by the learned V<sup>th</sup> Additional Sessions Judge, Karachi-South, vide order dated 05.05.2023.

2. As per F.I.R., on 14.04.2023 at 0030 hours, S.I.P. Ali Jawwad of P.S. Kharadar, Karachi arrested the applicant at Patang Gali Godown, Achar Gali, Joodia Bazar, Karachi on being found in possession of 256 bags of betel nuts (چھالیہ سپاری), 87 bags of JM, Adaab Z-21, Tara Naswar (نسوار), 92 bags of sault and one more bag of Tara Naswar (نسوار), which are injurious to health; as such, the applicant was booked in the aforesaid F.I.R. After investigation, sections 270, 273, 34, P.P.C. as well as sections 4/5/8(i) of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Main Puri Act, 2019 (“**the Act**”) were added in the Chalan.

3. Learned counsel for the applicant has contended that the applicant is innocent and has falsely been implicated in this case; that there is no independent witness of the alleged incident despite the fact that it allegedly took place in a busy area and the complainant had prior information about shifting of the alleged harmful material; that provisions of sections 270, 273 336-B and 337-J, P.P.C. are

not applicable in the instant case; that the offence under sections 4/5 of the Act are punishable up to three years; as such, the same does not fall within the prohibitory clause of section 497 Cr.P.C.; that as per report of the Chemical Examiner the alleged recovered articles contain hazardous material; therefore, the same are unfit for human consumption; however, the same are not poisonous; hence, the guilt of the applicant requires further inquiry entitling him to the concession of bail. In support of his contentions, learned counsel has relied upon the cases of *Muhammad Ayooob and another v. The State* (2020 P.Cr.L.J. 984) and *Ameer Alam v. The State* (2020 MLD 847).

4. On the other hand, learned Additional Prosecutor General has opposed the grant of bail to applicant on the ground that he is involved in a heinous offence, as huge amount of injurious material has been recovered from his possession, which he was shifting to godown for human consumption; that the use of Gutka and betel nuts is increasing day by day and causing cancer to the masses; that the applicant has not alleged any enmity or ill-will against police for falsely implicating him in this case; that sufficient evidence is available with the prosecution to connect the applicant with the commission of alleged offence; hence, he is not entitled to the concession of bail.

5. Heard, record perused.

6. As per report of Chemical examiner, the alleged material is “hazardous” and not fit for “human consumption”. Section 336-B, P.P.C. relates to causing hurt by corrosive substance, while section 337-J, P.P.C. attracts to causing hurt by mean of a poison. So far application thereof in the instant case is concerned, it is yet to be determined as to whether the case of applicant falls within the purview of said provisions of the P.P.C. or not, which is to be decided at the time of trial by the trial Court after recording of evidence. Hence, I am of the considered view that the guilt of the applicant under the said penal provisions of P.P.C. requires further

inquiry. Sections 270 & 273, P.P.C. even if attract to the facts of the case, are bailable. Under sections 4 and 5 of the Act, the alleged offence of possessing, offer for sale, distribution or delivery on any terms whatsoever, importing, exporting or transporting and dispatching any “derivative”, “Gutka and “manpuri”, as defined in clauses (iv) and (viii) of the section 2 of the Act is punishable under section 8(1) of the Act with imprisonment up to three years and not less than one year; hence, the same does not fall within the prohibitory clause of section 497, Cr.P.C.

7. The law is very liberal especially when it is salutary principle of law that in the offences which do not fall within prohibitory clause, the grant of bail is a rule while its refusal is merely an exception. It further appears that the applicant is confined in judicial custody since the day of his arrest, whereas police has already submitted challan against him; hence, his physical custody is not required by the police for further investigation. Accordingly, the instant application is allowed and in result thereof the applicant is admitted to post-arrest bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs.200,000/- (Rupees Two Lac Only) and P.R. Bond for like amount to the satisfaction of trial Court.

7. Needless to mention here that in case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him requisite notice, as per rules.

8. Above are the reasons of my short order dated 07.06.2023

JUDGE