

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1576 of 2023

Date	Order with signature of Judge
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For hearing of bail application

21.8.2023

Mr. Zahid Ali Hayat, advocate for the applicants
Mr. Muntazir S. Mehdi, APG a/w I.O/SI Iftikhar Khan of P.S
Paposhnagar.

Through this bail application under Section 497 Cr.P.C., the applicants have sought admission to post-arrest bail in F.I.R No.137/2023, registered under Section 8(i) & 4 Sindh Prohibition of Preparation Manufacturing Storage Sale & Use of Gutka, Mainpuri Act, 2020 (hereinafter referred as Act, 2020) at Paposh-nagar Police Station, Karachi. The earlier bail plea of the applicant has been declined by the learned Ist Additional Sessions Judge (Central) Karachi vide order dated 19.06.2023 in Cr. Bail Application No. 1173/2023.

2. It is alleged that ASI Muhammad Imran along with the police party was busy on patrolling duty; that during patrolling received spy information through an informer that one Tariq is coming from Baluchistan to Karachi having betel nuts and Gutka and will dump it in Iqbal Town; that ASI with the help of police party apprehended them after their search conducted in presence of police party as such 16 sacks of betel nuts were recovered from inside the vehicle while 13 sacks of betel nuts were recovered from inside the house total weighed 258 KG betel nuts 46 sacks of small metal nuts weighed 621 KG, 20 sacks of Rajni, Safina Jem, etc. Total weighed 251 KG; the real owner of these goods is the applicant.

3. The applicants being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicants have been falsely implicated in the case. Learned counsel for the applicants submitted that the imprisonment of Section 8 is only 3 years which does not fall within the ambit of the Prohibitory Clause of Section 497(1) CR.P.C that the case of the prosecution is one of the further inquiry under Section 497(2) Cr. P.C. and in such type of cases grant of bail is the rule of our superior courts. He has further submitted that the involvement of the applicants in the commission of the alleged offence is yet to be determined and the

conclusion of the trial does take a long time whereas they are behind the bar since their arrest. He lastly prayed for allowing the bail application.

4. Learned APG has submitted that the tentative assessment of material available on record, prima facie leads to a conclusion that there are no reasonable grounds exist to believe that it is a case of further inquiry. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. The allegation leveled by the prosecution in the F.I.R. falls within the definition of sections 3, 4, 5, 6, and 7 of the Act, 2020, which are punishable u/s 8 of the Act, 2020. For sake and convenience, it will be appropriate to reproduce section 8 of said Act which reads as under:-

“8. (1) Whoever contravenes the provision of sections 3, 4, 5, 6 and 7 shall be punishable with imprisonment which 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 two lacs (two hundred thousand) rupees.

(2) In case of default of payment of fine under sub-section (1), the accused shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (five hundred thousand) rupees.”

7. Prima facie, the punishment u/s 8 (1) as provided by the Act, 2020, is three (03) years which does not exceed the limits of the Prohibitory Clause of Section 497 Cr.P.C.

8. In view of the above legal position, I am of the view that applicants have successfully made out a good prima facie case of further inquiry as envisaged under sub-Section (2) to Section 497 Cr.P.C. Accordingly, instant Criminal Bail Application is hereby allowed. Consequently, Applicants are admitted to bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) each and PR bond in the like amount to the satisfaction of the trial Court.

JUDGE

Shahzad/*