THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2620 of 2025

Applicants	:	Mudasir and Muzamil sons of Muhammad Umer through M/s. Liaquat Ali Khan and Shafiq Ahmed, Advocates
Respondent	:	The State, through Ms. Seema Zaidi, Additional Prosecutor General, Sindh
Date of hearing	:	17.10.2025
Date of decision	:	17.10.2025

O R D E R

Jan Ali Junejo, J.- Through the instant application under Section 497, Cr.P.C., the Applicants, namely Mudasir and Muzamil, sons of Muhammad Umer, seek post-arrest bail in Crime No.381 of 2025, registered at Police Station Malir Cantt., Karachi, for offence under Section 8-A(1) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, after their similar plea was declined by the learned VI-Additional Sessions Judge, Malir, Karachi, vide order dated 26.09.2025.

2. Briefly stated, the prosecution story is that on 14.09.2025, at about 03:30 hours, SIP Ali Murad along with his police staff, while on patrol duty, received spy information that two persons were engaged in manufacturing Gutka/Mawa inside an underground tank in a house located in Katchi Abadi Rashdi Goth. Acting upon such information, the police party raided the spot, recovered two persons, who disclosed their names as Mudasir and Muzamil, both sons of Muhammad Umer. From the alleged underground tank, the police recovered eight buckets of prepared Gutka/Mawa weighing approximately 95 kilograms, eleven sacks of Chaliya weighing 143 kilograms, various materials including choona, Azizan patties, white powder, mixture machines, packing materials, and a digital scale. From the personal search of applicant Mudasir, one mobile phone was also recovered. The Applicants were arrested on the spot and recovered articles were sealed. Five purees were separately sealed for

chemical examiner; hence, the case was registered under Section 8-A(i) of the Act, 2019. They were subsequently remanded to judicial custody.

3. Learned counsel for the Applicants contended that the Applicants are innocent and have been falsely implicated with malafide intent. He submitted that there are glaring contradictions between the FIR and the site inspection memo regarding the place and mode of recovery. It was argued that the alleged recovered materials were packed and seized separately and do not constitute a “mixture” within the meaning of Section 2(vi) and (vii) of the Act, 2019; hence, the penal provision of Section 8(1) is not attracted. Counsel further argued that the recovery was made without associating any private or independent witnesses, which casts serious doubt on the veracity of the alleged recovery. It was also contended that no brand name, label, or identification mark of Gutka/Mawa was found, nor was the recovered substance chemically established as Gutka/Mawa so far. The Applicants have no previous criminal record, the investigation has been completed, and they are no more required for further interrogation. He submitted that the case, at best, falls within the ambit of further inquiry as envisaged under Section 497(2), Cr.P.C. He prayed that the rule of “bail not jail” be applied, especially when the offence does not fall within the prohibitory clause.

4. Conversely, learned Additional Prosecutor General, Sindh, opposed the grant of bail on the ground that a huge quantity of Gutka/Mawa and raw materials were recovered from the Applicants, who were caught red-handed while manufacturing the same. She contended that such a massive recovery cannot be foisted upon the Applicants without any malafide motive, and the material available on record prima facie connects them with the commission of offence. Lastly, the learned counsel prayed for dismissal of bail.

5. I have considered the arguments advanced by the learned counsel for the parties and carefully examined the material available on record with the degree of tentative assessment permissible at the bail stage. Upon such assessment, it appears that the applicants were allegedly apprehended at the spot, and a substantial quantity of prepared *Gutka/Mawa*, *Chaliya*, machinery, and other materials purportedly used in its manufacture were recovered. However, a close examination of the record reveals certain material inconsistencies which, at this preliminary stage, cannot be ignored. The FIR asserts that the recovery was effected from an underground tank situated in an empty house, whereas the inspection memo describes the place of recovery as a double-storey

house and specifically mentions a “kitchen tanki.” This apparent contradiction, though it may seem trivial in isolation, assumes significance in bail proceedings, as even a single circumstance creating reasonable doubt regarding the manner or place of recovery brings the case within the ambit of “further inquiry” as contemplated under Section 497(2), Cr.P.C. Moreover, it is noted that the alleged raid was conducted in a thickly populated residential area, yet no independent or private witness was associated by the police. All the mashirs of the recovery are official witnesses. While the non-association of private persons is not by itself fatal to the prosecution case, it nonetheless affects the evidentiary value and transparency of the recovery proceedings, particularly where the prosecution claims to have seized a large quantity of prohibited and contraband material. This omission, coupled with the aforementioned discrepancies, makes the prosecution story open to serious doubt at this stage, thereby entitling the applicants to the concession of bail by way of further inquiry.

6. The pivotal issue in the present case turns upon whether the recovered substances fall within the definition of a “mixture” as envisaged under Sections 2(vi) and (vii) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale, and Use of Gutka and Manpuri Act, 2019. The applicants have plausibly contended that the recovered items—*Chaliya*, tobacco, *choona*, and other ingredients—were separately packed and not combined into a final consumable form. The prosecution record, at this stage, does not conclusively establish that these ingredients were mixed to constitute a prohibited “mixture” within the meaning of the Act. This aspect, therefore, prima facie takes the case outside the ambit of Section 8(1) of the said Act. Although the matter ultimately requires adjudication at trial, the existing material raises a substantial doubt that brings the case within the purview of “further inquiry” as contemplated under Section 497(2), Cr.P.C., entitling the applicants to the concession of bail at this stage.

7. The offence under Section 8(1) of the Act, 2019, carries a punishment of up to three years but does not fall within the prohibitory clause of Section 497(1) Cr.P.C. The settled principle as laid down in ***Tariq Bashir v. The State (PLD 1995 SC 34)*** and reiterated in ***Muhammad Tanveer v. The State (PLD 2017 SC 733)*** and ***Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)*** is that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal an exception, unless there exist exceptional circumstances such as likelihood of abscondence,

tampering with evidence, or repetition of offence, none of which are apparent in the present case.

8. The investigation in the present case has been completed and the challan has already been submitted before the competent Court. Therefore, the applicants are no longer required for custodial interrogation, and their continued detention would serve no useful purpose. In view of the foregoing discussion and the collective assessment of the material on record, I am of the tentative opinion that the prosecution's case requires further inquiry within the contemplation of Section 497(2), Cr.P.C.

9. For the reasons discussed above, the applicants have succeeded in making out a case for the concession of post-arrest bail. Accordingly, this Criminal Bail Application is allowed, and the applicants, namely *Mudasir* and *Muzamil*, sons of *Muhammad Umer*, are admitted to post-arrest bail subject to furnishing surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand Only) each and a P.R. bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and confined solely to the purpose of this Order. They shall not prejudice or influence the learned trial Court while deciding the case on merits. These are the detailed reasons for the short order dated 17.10.2025.

JUDGE