

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Jawad Akbar Sarwana

Cr. Bail Appln No.1817 of 2025

Applicant/Accused No.1 : Imran son of Muhammad Saleem
Applicant/Accused No.2 : Imran son of Wali Muhammad
through Mr.Zafar Iqbal, Advocate

Respondent : The State
Through Mr. Muhammad Noonari, APG

Date of Hearing : 08.09.2025

Date of Decision : 22.09.2025

ORDER

Jawad Akbar Sarwana, J.: Applicant/accused nos.1, 24 years old, Imran s/o Muhammad Saleem, CNIC No.42301-18201881 (born 01.01.2001)(hereafter referred to as "**24 y/o Imran**") and Applicant/accused nos.2, 48 years old, Imran s/o Wali Muhammad Dawara, CNIC No.42301-90311197 (born 01.01.1977)(hereafter referred to as "**48 y/o Imran**") seek post-arrest bail in Crime No.241/2025 registered under section 8-A(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri ("Gutka Mawa") Act, 2019 at P.S. Kharadar, Karachi. The earlier bail application of the two applicants/accused was declined by the Xth Additional Sessions Judge Karachi South vide order dated 29.05.2025 in Cr. Bail Application No.1843/2025. The lower forum in its bail refusing order dated 29.05.2025, found that the accused were seized with a big tub on the counter of the cabin, consisting of both raw mixed and ready-to-sell injurious material, pooriyan (pouches) of Mawa Gutka, and such Mawa Gutka was cancer-causing and unfit for human consumption. Therefore, the two applicants/accused were not entitled to bail.

2. Learned Counsel for the two applicants/accused has argued that the learned Xth Addl. Sessions Judge Karachi South overlooked that the two applicants/accused were allegedly not the owners of the cabin. Further,

there were no witnesses present and the two applicants/accused were not found selling the Gutka Mawa. They were merely standing next to the cabin.

3. The learned APG has strongly opposed the concession of bail. He submits that the expert report of the Director Laboratories & Chemical Examiner to the Government of Sindh Karachi's Report dated 04.06.2025 available in the Police File has also come back positive. As per the tests performed on the two sealed parcels submitted to the Laboratory, the case property of 250 grams of Gutka Mawa were found to contain compounds that cause cancer and, therefore, are unfit for human consumption. He submitted that, as per the CRO, the offence was a repeat second-time offence of alleged violation concerning Gutka Mawa for 24 y/o Imran; whereas, 48 y/o Imran between the years 2020 to 2024, was booked in three offences under the Gutka Mawa Act, 2019, and one offence under Section 269/270/337-J of PPC. Therefore, as habitual offenders, both should remain in custody until trial proceedings are concluded as they were likely to return to the illegal criminal trade of Gutka Mawa.

4. Heard and perused the record with the able assistance of the learned Counsels, which reflects that the alleged recovery was affected within a populated area, yet no private person was associated as a witness to the arrest and recovery proceedings, and all the witnesses are police officials. Therefore, there appears to be much less apprehension of tampering with the evidence by the accused. The challan has been submitted before the Court having jurisdiction, and the investigation of the case is complete, including the submission of the Government Laboratory chemical report. Therefore, custody of the two applicants/accused is not required for any further investigation or recovery.

5. The offence under section 8 of the Gutka Mawa Act, 2019, carries punishment with imprisonment which may extend to three years but shall

not be less than one year; thus, the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C. In such cases, the grant of bail is a rule, whereas refusal is an exception. According to the Supreme Court in the Mohammad Imran case¹ the grounds of denial of bail are described as: (a) the likelihood of the applicants/accused abscondence to escape trial; (b) his tampering with the prosecution evidence, or influencing the prosecution witnesses to obstruct the course of justice, or (c) his repeating the offence, keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of the offence alleged. The prosecution has to show if the case of the applicants/accused falls within any of these exceptions based on the material available on the record.

6. In the case at hand, the most compelling argument put forward by the prosecution in terms of the Supreme Court's dicta in the Muhammad Imran case, supra, is the previous criminal record of the two applicants/accused. The CRO of the two applicants/accused, as available in the Police File available with the learned APG, show that for 24 y/o Imran, this is his repeat second-time offence of alleged violation concerning Gutka Mawa Act, 2019; whereas, for 48 y/o Imran between the years 2020 to 2024, he has been booked in three offences under the Gutka Mawa Act, 2019 and once offence under Section 269/270/337-J of PPC. The learned APG has argued a clear exception to bail has been made out in the facts and circumstances of the case. Therefore no concession of bail should be extended to the two applicants/accused.

7. I have heard the learned APG submission. While the learned APG has been able to identify the previous criminal record of the two accused, he has not been able to satisfy the Court concerning either the outcome of the past FIRs or the current status of the FIRs, be it the one (1) past FIR for 24 y/o Imran or the past four (4) FIRs for 48 y/o Imran. Instead, learned APG has requested further time to provide the updated information. Four

¹ Supreme Court of Pakistan Order dated 05.08.2021, Muhammad Imran (Crl. P.860-L/2021).

(4) months have passed since the two accused have been in custody, and I have heard the matter thrice between August and September 2025 (till present). It would be unfair to continue keeping the applicants/accused in custody for another month or so, waiting for the required information. The learned APG would be well advised to obtain this most material information concerning the concession of bail sooner rather than later. The bench cannot wait endlessly for prosecution

8. Without prejudice to the above, it is apparent that the two applicants accused have a lot to answer in terms of their past conduct, which will no doubt come into play during the trial side and the information which may not be available before this bench will be provided to the trial Court, promptly, for consideration of the trial and, if the accused/applicant are found guilty then the previous criminal record, may well influence the sentencing and/or penalty. At this stage, a deeper appreciation of the evidence is not permissible while deciding the bail application, and the same is to be decided tentatively based on the material available on record. Lastly, I must also consider the obiter remarks of the Supreme Court in Muhammad Tanveer v. The State and Another, PLD 2017 SC 733, cited by my brother in the High Court of Sindh, Circuit Court, Larkana, Cr. Bail Appln. No.S-113 of 2025, Ayaz Hussain Siyal v. The State, Order dated 17.03.2025.

9. Given the above, from the tentative assessment of the record, the applicants/accused have made out their case for further inquiry, as envisaged u/s 497(II) Cr.P.C. Accordingly, keeping in view the above discussion:

- (a) 24 years old, Imran s/o Muhammad Saleem, CNIC No.42301-18201881 (born 01.01.2001) is admitted to bail, subject to furnishing solvent surety in the sum of Rupees Seventy Five Thousand only (Rs.75,000/=) and P.R. bond in the like amount to the satisfaction of the trial Court; and

(b) 48 years old, Imran s/o Wali Muhammad Dawara, CNIC No.42301-90311197 (born 01.01.1977) is admitted to bail, subject to furnishing solvent surety in the sum of Rupees One Lac Twenty Five Thousand only (Rs.125,000/=) and P.R. bond in the like amount to the satisfaction of the trial Court;

10. The bail application is allowed in the above terms.

J U D G E