

IN THE HIGH COURT OF SINDH AT KARACHI.

Cr. Bail Appln. No. 3031 of 2025.

Applicant : Shahzad Ali @Mam Brohi
through Mr. Liaquat Ali Jamari,
Advocate.

Respondent : The State through
Mr.Mohammad Noonari, D.P.G.
Sindh

Date of hearing : 12.12.2025.
Date of order : 12.12.2025.

O R D E R.

TASNEEM SULTANA-J.-:- Through this criminal bail application, the applicant Shahzad Ali seeks pre-arrest bail in Crime No.132/2025, registered at Police Station Chuhar Jamali, for the offences under sections 4 & 8 of the SPM Act, 2019 read with section 337-J, P.P.C. Earlier, the applicant had availed the same relief from the Court of learned Additional Sessions Judge-II, Sujawal; however, the interim pre-arrest bail so granted was later on recalled vide order dated 04.10.2025.

2. Brief facts of the prosecution case, are that on 05.09.2025 complainant SIP Allah Rakhiyo Bhund, along with police staff, while on patrol duty at about 2200 hours near Khanto Mori close to Bacha Band, allegedly saw three persons coming from the side of Bacha Band carrying white plastic sacks on their shoulders. It is alleged that upon the police party stopping the vehicle and alighting therefrom, the said persons, after being identified in the light of vehicle and torch as (i) Shahzad Ali @ Mama Brohi (applicant), (ii) Muhammad Ibrahim and (iii) one unknown person, fled away by taking benefit of darkness leaving behind three sacks. It is further alleged that the said sacks, upon checking, were found containing green coloured copies filled with “mawa ghutka”, comprising 75 shoppers and 1875 puries in total, out of which 05 puries were sealed for chemical examination and remaining puries were sealed in the same sacks. Hence, the FIR.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case; that he was neither apprehended at the spot nor any incriminating recovery has been shown to have been effected from his exclusive possession. He further submitted that the applicant has been nominated only on the basis of alleged identification in torch light during late night hours, which is doubtful and requires strict scrutiny; moreover, no

independent mashir has been associated despite the place allegedly being a thickly populated area, and all the prosecution witnesses are police officials of the complainant party. He also pointed out that only 05 puries were allegedly sealed for chemical examination and the remaining purported contraband was not properly sent, which also creates serious doubt regarding the prosecution story. Learned counsel prayed that the applicant may be admitted to pre-arrest bail.

4. Conversely, learned Assistant Prosecutor General opposed the application and contended that the applicant has been specifically nominated in the FIR; that the alleged contraband “mawa ghutka” was recovered from the place of incident, which prima facie connects the applicant with the commission of the alleged offence. He further argued that pre-arrest bail is an extraordinary relief which can only be granted in exceptional circumstances; however, the applicant has failed to establish mala fide or ulterior motive on the part of the police. He prayed that the application may be dismissed.

5. Heard. Record perused.

6. The allegation against the applicant, as emerging from the FIR and the material placed on record, is that he, along with co-accused persons, was allegedly seen coming from the side of Bacha Band carrying plastic sacks, and upon seeing the police party, fled away by taking benefit of darkness leaving behind three sacks which, upon checking, were found containing “mawa ghutka”. The applicant has been nominated on the basis of alleged identification in the light of vehicle and torch during late night hours.

7. It is manifest from the record that the alleged recovery was not shown to have been effected from the exclusive possession of the applicant; rather, as per prosecution version, the applicant is stated to have fled away by taking benefit of darkness, while the alleged sacks containing “mawa ghutka” were secured from the place thereafter. Whether such alleged recovery can legally be attributed to the applicant, and whether the prosecution is able to establish his conscious possession or nexus with the recovered contraband, is a matter which requires determination by the learned trial Court after recording of evidence. At this stage, the Court is not expected to enter into deeper appreciation of evidence but only to assess whether reasonable grounds exist for believing that the applicant is connected with the commission of the alleged offence. The absence of any independent mashir from the

locality, despite the alleged occurrence at a public place, calls for further inquiry into the prosecution case.

8. It is also relevant to note that the maximum punishment provided under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 is three years; hence, in such like cases, grant of bail is a rule and refusal is an exception. In this regard, reliance is placed upon the cases of **Tarique Bashir and 5 others v. State (PLD 1995 SC 34)** and **Muhammad Tanvir and another v. The State (PLD 2017 SC 733)**.

In another case reported as **Zaigham Ashraf v. The State and others (2016 SCMR 18)**, it has been held by honourable Supreme Court as under:

"To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy or causal manner as that will defeat the ends of justice because if the accused charge, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in jail without just cause and reasonable ground."

9. Moreover, the prosecution case, at this stage, primarily rests upon police officials, who are themselves the complainant party, and there is no assertion that the applicant would be in a position to tamper with the prosecution evidence. In such circumstances, keeping the applicant at the mercy of arrest, without sufficient material demonstrating mala fide on his part, would not serve the ends of justice.

10. In view of above, the case of the applicant, prima facie, falls within the ambit of further inquiry under Section 497(2), Cr.P.C. Consequently, this criminal bail application is allowed and the interim pre-arrest bail granted to the applicant vide order dated 04.11.2025 is hereby confirmed on the same terms and conditions.

Needless to mention that observations made hereinabove are tentative and shall not prejudice either party during the trial.

JUDGE