

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1334 of 2025

Applicants : Majid Ali and Ehsan-ul-Haq, Through
Mr. Mallag Assa Dashti, advocate

The State : The State through Ms. Seema Zaidi,
Additional Prosecutor General,
Sindh

Date of hearing : 14.05.2026

Date of Order : 14.05.2026

ORDER

Jan Ali Junejo, J:-- Through this Criminal Bail Application filed under Section 497, Cr.P.C., the Applicants namely (1) Majid Ali son of Ghulam and (2) Ehsan-ul-Haq son of Peer Muhammad seek post-arrest bail in FIR No.63 of 2026, registered at Police Station Dhabeji, District Thatta, for offences punishable under Sections 3, 4, 5 and 8 of the Sindh Prohibition for Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The Applicants are aggrieved by the Order dated 17.04.2026 passed by the learned II-Additional Sessions Judge, Thatta, whereby their post-arrest bail application was declined.

2. Briefly stated, the prosecution case as set out in the FIR is that on 07.04.2026, the complainant SIP Mian Bakhsh Mari along with police officials was on patrol duty and conducting snap checking near Old Check Post Dhabeji. During checking, an AC Coach bearing registration No.BSA-762 was intercepted. The vehicle was allegedly being driven by Applicant Majid Ali while Applicant Ehsan-ul-Haq was acting as conductor. Upon search of secret

cavities of the coach, thirty sacks allegedly containing crushed betel nuts (supari) weighing 405 kilograms and two sacks containing 1,000 prepared Gutka sachets were recovered. Samples were secured and the Applicants were arrested at the spot. Consequently, the present FIR was registered against them.

3. Learned counsel for the Applicants contended that the Applicants are innocent and have falsely been implicated in the present case. He argued that no prohibited substance was recovered from the personal possession of the Applicants and they were merely driver and conductor of the vehicle. He further submitted that despite the alleged recovery having been effected at a public place situated on a busy national highway, no independent mashir from the locality was associated with the recovery proceedings in violation of the spirit of Section 103, Cr.P.C. Learned counsel further argued that the offence under Section 8 of the Act carries a maximum punishment of three years and does not fall within the prohibitory clause of Section 497, Cr.P.C.; therefore, grant of bail is a rule and refusal an exception. He maintained that the challan has already been submitted, the Applicants are no longer required for investigation, and the case at least calls for further inquiry within the contemplation of Section 497(2), Cr.P.C. He lastly prayed that the Applicants be admitted to post-arrest bail.

4. Conversely, learned Additional Prosecutor General opposed the application and argued that a huge quantity of contraband material was recovered from the vehicle being operated by the Applicants. She submitted that the Applicants were apprehended

red-handed and sufficient incriminating material is available connecting them with the commission of the offence. It was further argued that the offence adversely affects public health and society at large, therefore the Applicants do not deserve the concession of bail. She accordingly prayed for dismissal of the application.

5. I have heard learned counsel for the parties and have carefully examined the available record. On a tentative assessment of the material available on record, it appears that, in addition to the alleged recovery of prepared Gutka sachets, 405 kilograms of crushed betel nuts contained in thirty sacks were also allegedly recovered from the possession of the applicant. The question whether such recovered material falls within the ambit of "Gutka" or "Manpuri" assumes significance. In this regard, the definitions of "Gutka" and "Manpuri" as provided under Section 2(vii) of the Sindh Prohibition of Gutka and Manpuri Act, 2019, are reproduced below:

"(vii) 'gutka' and 'manpuri' means— (a) any mixture which contains any of the forms of chalia (betel nut), catechu, tobacco, lime and other materials as its ingredients which is injurious to health and not fit for human consumption within the meaning of Section 5 of the Sindh Pure Food Ordinance, 1960 and is also in contravention of Rule 11 of the Sindh Pure Food Rules, 1965;

(b) any substance prepared for human consumption and is posing a serious threat to the health of the people and includes such substances as the Government may, by notification in the official Gazette, declare to be such substances."

A careful reading of the aforesaid definition makes it abundantly clear that mere recovery of betel nut simpliciter does not ipso facto fall within the mischief of "gutka" or "manpuri" as

contemplated under the Act, 2019. Rather, the statute explicitly requires that the recovered substance must be a mixture containing forms of chalia (betel nut), catechu, tobacco, lime and other materials as its ingredients, and further that such mixture must be injurious to health and not fit for human consumption within the meaning of Section 5 of the Sindh Pure Food Ordinance, 1960, and also be in contravention of Rule 11 of the Sindh Pure Food Rules, 1965. Additionally, the definition further requires that the substance must be prepared for human consumption and pose a serious threat to the health of the people, or be one which the Government has specifically notified in the official Gazette to be such prohibited substance. In the present case, at this tentative stage, no material is available on record to establish that the allegedly recovered wetted betel nuts constituted the requisite prohibited mixture, nor is there any chemical analysis report demonstrating that the same was injurious to health, unfit for human consumption, or in violation of the relevant food laws. Likewise, no notification has been pointed out whereby the recovered substance has been declared prohibited under the Act. This conspicuous absence of foundational material gives rise to a reasonable doubt regarding the applicability of the penal provisions, thereby attracting the rule of further inquiry within the contemplation of Section 497(2), Cr.P.C.

6. The admitted position is that the Applicants have been booked under Sections 3, 4, 5 and 8 of the Sindh Prohibition for Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The punishment provided under Section 8 of the

Act extends to three years' imprisonment. The alleged offences, therefore, do not fall within the prohibitory clause of Section 497, Cr.P.C. It is by now a settled principle of law that in offences falling outside the prohibitory clause, grant of bail is a rule and refusal is an exception unless extraordinary or exceptional circumstances are shown to exist.

7. It is also significant that no private mashir was associated with the recovery proceedings despite the alleged interception having taken place on a public road near a check post. Although non-association of private witnesses is not by itself fatal to the prosecution case, yet at the bail stage it constitutes a circumstance requiring tentative examination while assessing the overall strength of the prosecution case.

8. The Applicants were admittedly serving as driver and conductor of the coach. Their exact role, degree of knowledge regarding the contents of the concealed cavities and their alleged nexus with the recovered material are matters which require further probe during trial. At this stage, such aspects create a reasonable possibility of further inquiry within the meaning of Section 497(2), Cr.P.C.

9. Another important consideration is that the investigation has already been completed and the challan has been submitted before the competent Court. The Applicants are no longer required for investigation. Nothing has been brought on record to suggest that

the Applicants are previous convicts, habitual offenders, or that there exists any likelihood of their absconding or tampering with the prosecution evidence if released on bail.

10. For the foregoing reasons, this Court is of the tentative view that the case of the Applicants calls for further inquiry and falls within the ambit of Section 497(2), Cr.P.C. Consequently, the instant Criminal Bail Application is allowed. The Applicants namely Majid Ali son of Ghulam and Ehsan-ul-Haq son of Peer Muhammad are admitted to post-arrest bail in FIR No.63 of 2026, under Sections 3, 4, 5 and 8 of the Sindh Prohibition for Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, registered at Police Station Dhabeji, District Thatta, subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) each and P.R. bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are purely tentative in nature and confined solely to the disposal of the instant bail application; therefore, the same shall neither prejudice the case of either party nor influence the learned trial Court while recording evidence and deciding the matter strictly on its own merits. These are the detailed reasons for the Short Order dated 14-05-2026.

JUDGE