

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.S-3520 of 2025

Applicant : Fayaz Ali son of Gullan @ Ghulam
Muhammad Jamari through
Mr. Liaquat Ali Jamari, Advocate

The State : Through Mr. Sharaf-u-Din Kanhar,
Assistant Prosecutor General, Sindh

Date of hearing : 06.04.2026

Date of decision : 06.04.2026

ORDER

Jan Ali Junejo, J.- Through this application under Section 498, Cr.P.C., Applicant- Fayaz ali son of Gullan @ Ghulam Muhammad Jamari, seeks pre-arrest bail in Crime No.367 of 2025, registered at Police Station Sujjawal for offences under Sections 4 and 8 of the SPMG Act, 2019, read with Section 337-J, PPC. The learned IInd Additional Sessions Judge, Sujjawal, *vide* Order dated 16.12.2025, declined confirmation of interim pre-arrest bail. The Applicant has approached this Court. Ad-interim pre-arrest bail was granted by this Court on 19.12.2025.

2. The facts of the prosecution case as mentioned in the FIR are that on 18.10.2025, at about 1230 hours, complainant SIP-Abdul Qadir Panhwar lodged FIR alleging therein that on same day, he was posted at PS Sujawal and left PS for patrolling duty along with sub-ordinate staff, when they arrived at Chuhar Bypass, Link Road, Muchharo, at 1130 hours, they saw two persons standing beside the road with two sacks in front of them, who on seeing police party tried to escape from spot. Police successfully apprehended one accused while the other made his good escape. The apprehended accused disclosed his name as Hanif son of Uris Gurmani and disclosed the name of absconder as Fayaz Ali son of Ghulam Mohammad Jamari. Police checked the sack belonging to apprehended accused which was found containing 800 gutka sachets and the sack belonging to escaper was found containing 190 mawa gutkas, 5 mawa guttka and 5 puries of gutka were sent for chemical examination, remaining property was sealed. Police also recovered Rs.200 cash from apprehended accused under mashirnama; hence, this FIR. Due to

non-availability of private mashirs, the mashirnama was prepared with police witnesses. The FIR invokes Sections 4 and 8 of the SPMG Act, 2019 r/w Section 337-J PPC.

3. Learned counsel for the Applicant contends that no incriminating recovery was effected from the Applicant; his nomination rests solely on the disclosure of co-accused-Hanif Gurmani, which is inadmissible against a co-accused per Article 38 of the Qanun-e-Shahadat Order; that the place of occurrence is a busy thoroughfare, yet no independent mashir was associated in contravention of Section 103, Cr.P.C., rendering the recovery proceedings doubtful; that the entire property was not sent for chemical examination, only 5 mawa guttka and 5 puries of gutka, with unexplained omission and delay; that Section 337-J PPC is misapplied as there is no allegation of administration or attempt to administer any poisonous or unwholesome substance to any person; that the alleged offences do not fall within the prohibitory clause of Section 497(1), Cr.P.C., thus bail is a rule; that the Applicant is a local resident with fixed abode, there is no likelihood of absconson, and arrest would only lead to humiliation. He prays for confirmation of pre-arrest bail.

4. Conversely, learned Assistant Prosecutor General, Sindh opposes the application, contending that the Applicant is specifically nominated in the FIR as the absconding companion of the arrested accused, and the recovery of 190 puries is attributed to the sack left by him; that Section 337-J PPC is non-bailable and the alleged act is injurious to public health at large; that the pre-arrest bail is an extraordinary relief requiring proof of mala fide, which the Applicant has failed to establish; and, that custodial interrogation may be required to unearth the supply chain. He prays for dismissal of the application and recall of interim relief.

5. I have heard the learned counsel for the parties and examined the tentative material. At the bail stage, deeper appreciation of evidence is eschewed; only a tentative assessment is made to ascertain whether the case calls for further inquiry or falls within the non-prohibitory clause warranting the exercise of discretion in favour of liberty. The scope and contours of pre-arrest bail under Section 498, Cr.P.C. are settled: it is an extraordinary relief to be granted sparingly where, inter alia, the case calls for further inquiry under Section 497(2), Cr.P.C., the accusation appears malafide or motivated, arrest is sought for ulterior purposes, or where the material does not furnish reasonable grounds for belief of guilt at this stage. Equally settled is the principle that for offences not falling within the

prohibitory clause, grant of bail is a rule and refusal an exception, subject to the facts of each case.

6. The record shows no personal arrest or recovery from the Applicant. His implication flows from (a) alleged visual identification during a fleeting incident where one person allegedly escaped, and (b) disclosure by co-accused-Hanif Gurmani naming his name as the fleeing person. The attribution of 190 puries to a sack allegedly left by the fleeing person is not supported by any independent mashir. Article 38 of the Qanun-e-Shahadat circumscribes the evidentiary value of a co-accused's statement against another accused; at the bail stage, such nomination, without more, does not furnish reasonable grounds for belief of guilt when uncorroborated by independent material. This, coupled with absence of direct recovery from the Applicant, squarely brings the matter within the compass of further inquiry. The prosecution acknowledges that no private mashir was associated due to alleged non-availability at a public road said to be in a populated area. While Section 103, Cr.P.C. is directory in certain contexts, consistent jurisprudence treats unexplained non-association of independent witnesses in recoveries from public places as a factor that renders the prosecution story open to doubt at the bail stage.

7. The main ingredient of Section 337-J PPC is administration, or causing to be taken, of a poison or unwholesome substance with intent to cause hurt or to facilitate an offence or with knowledge that hurt is likely. In analogous fact situations involving alleged recovery of gutka/mainpuri without any allegation of administration to a consumer, this Court has repeatedly viewed the applicability of Section 337-J as a matter for trial and treated it as prima facie misapplied at the bail stage, resulting in grant of bail on further inquiry. On the material presently available, there is no allegation that the Applicant administered or attempted to administer any injurious substance to any person, nor that any consumer complaint exists. Therefore, the addition of Section 337-J does not, at this stage, independently supply reasonable grounds to refuse bail.

8. The prosecution has not pointed to any conviction or to any concrete material indicating the Applicant's propensity to abscond or tamper with evidence. In any case, appropriate conditions can adequately address the State's apprehensions. While pre-arrest bail typically requires demonstration of mala fide or ulterior motive, Hon'ble Apex Courts have also recognized that where the case falls within further inquiry, arrest appears to be sought for humiliation or is otherwise unnecessary, and effective investigation can proceed without custodial detention, pre-arrest

bail may be granted. Here, the FIR is prompt; however, the evidentiary deficiencies noted above, the absence of direct recovery, and the availability of the Applicant before the Court without reported misuse of concession, collectively indicate that custodial interrogation is not shown to be indispensable.

9. In view of the foregoing, I am persuaded that the case against the Applicant, at this stage, calls for further inquiry within the meaning of Section 497(2), Cr.P.C.; that the offences, as prima facie disclosed, do not fall within the prohibitory clause; and that the rule of consistency favors the Applicant.

10. Consequently, this Criminal Bail Application is allowed. The ad-interim pre-arrest bail granted to Applicant-Fayaz Ali son of Gullan @ Ghulam Muhammad Jamari in Crime No.367 of 2025, registered at Police Station Sujjawal, for offence punishable under Sections 4 and 8 of the SPMG Act, 2019 read with Section 337-J PPC, is hereby confirmed, subject to the same terms and conditions.

JUDGE

Qurban