

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.S-1253 of 2026

Applicant : Imtiaz son of Tayyab through
Mr. Mumtaz Ahmed Soomro,
Advocate

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

Date of hearing : 17.08.2026

Date of decision : 17.08.2026

ORDER

Jan Ali Junejo, J.- Through this application under Section 498, Cr.P.C., Applicant-Imtiaz son of Tayyab, seeks pre-arrest bail in Crime No.21 of 2026, registered at Police Station Darro, District Sujawal, for offence punishable under Sections 4, 5 and 8 of the SPGM Act, 2019, calling in question the Order dated 17.04.2026, passed by the learned Sessions Judge/ Competent Judge SCNS, Sujawal, whereby, his pre-arrest bail application was dismissed. The Applicant was granted ad-interim pre-arrest bail by this Court *vide* Order dated: 27.04.2026.

2. The facts of the prosecution case, as stated in the FIR, are that on 08.04.2026 at about 1530 hours, Complainant-Zafar Ali Zour, while posted at Police Station Darro, left for patrolling and reached Sherwah Nako on Darro-Bathoro Road at about 1430 hours, they saw a motorcycle carrying two persons with a white sack placed between them. On being signaled to stop, the pillion rider, identified as Imtiaz son of Tayyab, alighted and fled, while the rider was apprehended and disclosed his name as Sajid alias Lala son of Ali Nawaz. On checking the sack, 500 sachets of Gutka and 144 packets of Raja Jani Patti were recovered; 10 sachets were separated and sealed for chemical analysis, while the remaining Gutka and Patti were sealed in the same sack. The accused disclosed that he and the absconding accused were jointly preparing and selling Gutka. Photographs were taken at the spot, and due to the non-availability of independent mashirs, the mashirnama of arrest and recovery was attested by PC-Zahoor Ahmed and PC-Nisar Ahmed. Thereafter, the accused and recovered property were brought to the Police Station, where the FIR was lodged.

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-Sajid alias Lala, 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 10 sachets were separated and sealed in a sack, for chemical analysis, with unexplained omission and delay; that the alleged offence does 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 absconsion, and arrest would only lead to humiliation. He lastly 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 500 sachets of Gutka and 144 packets of Raja Jani Patti were recovered is attributed to the sack left by him; 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 lastly 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-Sajid alias Lala, naming his name as the fleeing person. The attribution of 500 sachets of Gutka and 144 packets of Raja Jani Patti 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. 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.

7. 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.

8. 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.

9. Consequently, this Criminal Bail Application is allowed. The ad-interim pre-arrest bail granted to Applicant-Imtiaz son of Tayyab in Crime No.21 of 2026, registered at Police Station Darro, District Sujawal, for offence punishable under Sections 4, 5 and 8 of the SPGM Act, 2019 is hereby confirmed, subject to the same terms and conditions.

JUDGE