THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-1217 of 2026

Applicant:	Farman through Mr. Abdul Azeem Abbasi, Advocate.
Respondent:	The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.
Date of hearing:	26.10.2026.
Date of order:	26.10.2026.

O R D E R

MUHAMMAD HUMAYON KHAN, J: - The applicant seeks post-arrest bail in Crime No.388 of 2026, registered at Police Station Kotri, District Jamshoro, under section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 ("the Act"). His earlier applications were dismissed by the learned Judicial Magistrate/Consumer Protection Court, Jamshoro, on 01.09.2026 and the learned Ist Additional Sessions Judge, Jamshoro, on 07.09.2026.

2. Briefly, complainant ASI Ghulam Abbas Soomro alleged that on 29.08.2026, having departed for patrolling at 0100 hours with police personnel, he intercepted a rickshaw at about 0230 hours near Hurri on the road leading from Khanpur towards the Superhighway. Two persons were travelling therein; one escaped, whereas the applicant was apprehended. Two white sacks allegedly recovered from beneath the rear seats contained 50 packets of Z-21 Gutka Supari and 50 packets of Adab Gutka, respectively. One packet from each sack was separated and sealed for chemical examination. HC Inayat Ali and PC Irfan Ali Shoro acted as mashirs. The applicant allegedly identified the fleeing person as Wazeer Shoro. The rickshaw and articles were seized, and the FIR was registered at 0330 hours.

3. Learned counsel for the applicant contended that he was merely a passenger, neither owned the rickshaw nor exercised control over the sacks, and had been apprehended near Askari CNG Pump on 28.08.2026 and subsequently implicated through a foisted recovery. He questioned the absence of private mashirs, the sampling and preservation of the articles, and the applicant's connection with their alleged transportation. He further submitted that the offence falls outside the prohibitory clause of section 497 Cr.P.C.; the applicant claims no previous conviction, he is in judicial custody and is nor more required for further investigation as the case has been challaned.

4. Conversely, learned D.P.G. opposed bail on the grounds that the applicant was apprehended in the rickshaw carrying 100 packets of prohibited gutka, the recovery was witnessed by police officials against whom no established enmity was shown, and the substance poses serious danger to public health and prayed for refusal of bail.

5. Upon tentative assessment of the material presented, the applicant has made out a case for bail for the following reasons:—

(i). Section 8(1) provides imprisonment extending to three years. No previous conviction attracting the enhanced punishment for a subsequent offence has been identified in the supplied material. Although section 12 makes the alleged offence non-bailable, it remains outside the prohibitory clause of section 497(1) Cr.P.C. Sections 4 and 5 prohibit possession and transportation respectively; therefore, proof of an actual sale or manufacturing activity is not indispensable to the prosecution allegation. The relevant question here is the applicant's connection with the recovered articles.

(ii). The FIR does not identify the applicant as the driver or owner of the rickshaw, nor attribute to him any act of loading or handling the sacks. The alleged recovery was from beneath its rear seats, rather than his person, and another occupant admittedly escaped. Ownership is not essential to establish possession, but the applicant's knowledge and control over these concealed articles require examination through evidence. His presence in the vehicle in the circumstances does not conclusively resolve that issue at the bail stage.

(iii). Only two packets were reportedly sealed for analysis. Neither the chemical examiner's report nor the subsequent custody and dispatch record forms part of the material supplied. Consequently, no finding of a positive chemical result, defective sampling or actual tampering can presently be made. Equally, the absence of private mashirs does not by itself render police testimony inadmissible. These matters remain open for determination at trial.

(iv). In Tariq Bashir v. The State (PLD 1995 SC 34) and Muhammad Tanveer v. The State (PLD 2017 SC 733), the Honourable Supreme Court affirmed that bail in offences outside the prohibitory clause is ordinarily granted, while refusal requires exceptional circumstances. The harmful nature of gutka warrants serious attention, but does not dispense with an individual assessment of the accused's case.

(v). In the circumstances, the applicant's involvement calls for further inquiry within the meaning of section 497 (2) Cr.P.C.

6. Accordingly, this application is **allowed**. Applicant Farman son of Abdul Ghani Abro is admitted to post-arrest bail in the aforesaid crime upon furnishing solvent surety of Rs.50,000/- (Rupees fifty thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

7. These observations are tentative and shall not prejudice the determination of the case on merits.

JUDGE

Abdullah Channa/PS*