

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr.Bail.Appl.No.S- 65 of 2020

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

10.02.2020.

Ms. Shahida Parveen Ghani, Advocate for applicant.  
Ms. Rameshan Oad, A.P.G. for the State.

=

**ABDUL MAALIK GADDI, J.** Through this bail application, applicant seeks post arrest bail in Crime No.11 of 2020 registered u/s 269, 270 & 337-J PPC at P.S Tando Muhammad Khan. Prior to filing of this bail application, applicant/accused filed bail application No.14/2020 before the court of Additional Sessions Judge-I, Tando Muhammad Khan but the said bail application was dismissed vide order dated 15.01.2020 hence this bail application.

2. The allegation against the applicant / accused per FIR is that on 10.01.2020 at about 1630 hours police party recovered 150 packets of Safina Gutka each packet contained with 105 Safina Gutka total 15750 Safina Gutka from the vehicle Vigo Toyota Double Cabin which was allegedly driven by the applicant / accused.

3. It is contended by learned counsel for the applicant / accused that alleged recovered Gutka has been foisted upon applicant; that alleged place of incident was thickly populated area but no private person has been cited as mashir; that all the Sections applied in FIR areailable except Section 337-J PPC which has been misapplied by police; that neither the applicant manufactured the alleged Gutka nor was found selling it in public thorough place; that the positive chemical report if issued by concerned laboratory does not constitute any offence or proof that applicant was selling or manufacturing and was administering the same to any person who allegedly had made any

complaint against him before the police. She further submits that basic ingredients of Section 337-J PPC are lacking in this case. She therefore, submits that applicant being innocent has been falsely implicated by police, therefore, bail may granted to him.

4. On the other hand, learned A.P.G. opposes bail application on the ground that huge quantity of Gutka was secured from the back seat of Vigo Toyota Double Cabin which was driven by the applicant and such act for which he was found doing is hazardous as well injurious to the lives of community particularly for young generation.

5. I have heard learned counsel for the parties and gone through the material available on record and find / noted that the case has been challaned on 10.01.2020 whereas the parcel from the recovered Gutka as per learned A.P.G. has been sent to the chemical examiner on 13.01.2020 for its examination and report i.e. after the delay of about 03 days. On court query whether the chemical report is available on record, learned A.P.G. submits that the chemical report is still awaited. In this case, police have failed to examine any person who allegedly was found purchasing Gutka from applicant and / or the applicant was administering the same to him and such complaint has ever been made by any person from society to show that applicant had been involved in such an injurious case which is the basic ingredient of Section 337-J PPC. The alleged hazardous material was also not recovered from the exclusive possession of applicant. Furthermore, the place of incident is stated to be a busy road but no private person has been associated to witness the recovery proceedings nor any effort in this regard has been made by the complainant who himself has investigated the matter, therefore, false implication of applicant / accused at this stage cannot be ruled out. All the Sections areailable except Section 337-J PPC which is yet to be established by prosecution after recording evidence. Mere fact that offence

carries or involved with maximum punishment does not intercept the way to withhold concession of bail to applicant if otherwise attending circumstances may support his case. Case has been challaned and all the witnesses in this case are police officials, therefore, there is no likelihood that the applicant may tamper with the prosecution evidence. It is settled law that every accused is presumed to be blue eye boy of law until and unless he is found guilty of charge and law cannot be stretched upon in favour of prosecution particularly at bail stage. The instant case as per contents of FIR if may be presumed to be true even then Safina Gutka have not been shown to have been recovered from physical and exclusive possession of applicant and he being driver of vehicle cannot be held responsible particularly when police have failed to extend scope of investigation wherefrom alleged Safina Gutka were brought and were to be destined to.

6. In view of above discussion, application of Section 337-J PPC is yet to be established by prosecution after recording evidence. It is also settled law that tentative assessment of case is to be made at bail stage and deeper appreciation of evidence is not permissible. Accordingly and in view of above, case against applicant requires further enquiry within the meaning of subsection (2) to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed and the applicant is granted bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and P.R. Bond in the like amount to the satisfaction of the trial court.

JUDGE

Tufail