

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

**Crl. Bail Application No.S-1019 of 2025**

Applicants: Sher Khan son of Gul Adam Pathan, through Mian Taj  
Muhammad Keerio, Advocate

For the State: Ms. Sana Memon, A.P.G.

Date of hearing: 26-09-2025

Date of Order: 26-09-2025

## **ORDER**

**Jan Ali Junejo, J.** – The applicant, Sher Khan son of Gul Adam Pathan, seeks post-arrest bail under Section 497, Cr.P.C. in Crime No.411 of 2025, registered at Police Station Badin District Badin, for offence punishable under Sections 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019. It is pertinent to mention that the applicant's earlier bail plea was dismissed by the learned Sessions Judge, Badin, vide order dated 26.08.2025. The present application has been filed as a continuation of the applicant's right to seek bail before this Court.

2. The prosecution case, as set out in the FIR, is that on 13.08.2025, complainant/ASI of P.S. Badin along with other police officials, on the basis of spy information, intercepted a ten-wheeler truck bearing registration No. TAT-192 near Court Road, Badin. On search, huge quantity of contraband was recovered consisting of 142 bags of betel nut weighing 18 kilograms each, totaling 2556 kilograms, 220 bags of cement, and one white katta containing 1100 sachets of prepared gutka. The present accused, who was driving the said truck, was apprehended on the spot, while two accomplices fled away. From his personal search, an amount of Rs.5000/- was also recovered. The truck

and contraband were seized, sealed and deposited in malkhana, and thereafter FIR was lodged on behalf of the State.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated due to police enmity. He argued that no private mashirs were associated during the recovery proceedings despite the alleged incident having occurred in a public place, which casts doubt on the veracity of the case. Only (05) sachets out of 1100 mainpuries were sent for chemical analysis, leaving the nature of the remaining huge pieces unverified, thereby diminishing evidentiary value of the recovery. It was further argued that the FIR does not mention the source of procurement, manufacturing site, or any purchaser of the alleged contraband, making the prosecution story improbable. He further submitted that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., and that there is no apprehension of abscondence, tampering with evidence, or repetition of the alleged offence, thereby entitling the applicants to bail as a matter of rule while refusal is an exception. Lastly, the learned counsel prayed for grant of bail.

4. Conversely, learned A.P.G., assisted by the investigating officer, opposed the bail plea on the ground that a huge quantity of injurious and health-hazardous substance was recovered from the possession of the applicants, which by itself is sufficient to connect them with the commission of offence. He argued that offences under the SPPMSGM Act, 2019, pose a serious threat to public health and are on the rise, warranting stringent view by the courts. It was submitted that no mala fide or enmity has been alleged or established against the police to justify false implication or foisting of such a large quantity of contraband. It was thus contended that sufficient prima facie material exists on record, and the applicants do not deserve the concession of bail at this stage.

5. I have carefully considered the submissions advanced by learned counsel for the applicants as well as the learned Additional Prosector General for the State and have undertaken a tentative appraisal of the material available on record, as is permissible at the bail stage. Perusal of the record demonstrates that no private mashir was associated during the alleged recovery proceedings despite the incident having purportedly occurred in a public place where independent witnesses could have easily been procured which cannot be ruled out. While police officials are not legally disqualified from acting as witnesses, the absence of independent corroboration, particularly in cases involving alleged recovery of contraband, calls for careful judicial scrutiny at the bail stage. Furthermore, the FIR is silent regarding the source of procurement, the place of manufacturing, or the identity of any purchaser or distributor, which diminishes the overall evidentiary value of the prosecution's case at this preliminary stage. It is also significant that the offence alleged under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019 carries a maximum punishment of three years, which squarely places it outside the prohibitory clause of Section 497(1), Cr.P.C. The settled principle, as consistently reiterated by the Honourable Supreme Court of Pakistan, is that in cases not falling within the prohibitory clause, the grant of bail is to be treated as a rule, while refusal is an exception. This exception can only be invoked in the presence of extraordinary circumstances such as a likelihood of abscondence, the possibility of tampering with prosecution evidence, or a reasonable apprehension of repetition of the offence. No such circumstances have been demonstrated or substantiated in the present case. The Honourable Supreme Court of Pakistan in case of *Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)* reaffirmed this principle by observing that: "*The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-*

*bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court*". Moreover, there is nothing on record to suggest that the applicants have any previous conviction or that they are habitual offenders. Likewise, no material has been presented to indicate that they are likely to abscond or misuse the concession of bail if granted at this stage. It is also a settled principle of law that mere registration of a case, without concrete evidence of flight risk or prior criminal conduct, is insufficient to deprive an accused of the benefit of bail, particularly when the alleged offence does not fall within the prohibitory clause. The case has finally been challaned and there is no apprehension of tempering with the evidence on the part of applicant as all the witnesses are police officials and the applicant is in custody for about two months without effective trial. In these circumstances, the applicants have successfully made out a case for grant of bail.

6. Apart from the above, it is of material significance to note that the alleged recovery, i.e., 2556 kilograms of betel nuts as shown in the FIR, itself gives rise to a pertinent legal query. The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 ("the Act") specifically prohibits the manufacture, storage, sale and use of "gutka," "manpuri" and their derivatives, but the plain language of the statute does not in express terms extend such prohibition to the mere possession of raw betel nuts in isolation. It is also an admitted position that the contraband allegedly recovered from the present applicant is solely chalia (betel nut) and not any prepared mixture or substance falling within the statutory mischief of "gutka" or "manpuri" as defined under Section 2(vii) of the Act. The definition contained therein clearly envisages that "gutka" and "manpuri" mean a mixture comprising chalia (betel nut) along with other ingredients such as catechu, tobacco, lime or other injurious materials, or any other substance prepared for human consumption which poses a serious threat to health, or

such other substance as may be notified by the Government. The bare possession of betel nut in its raw form, without any admixture or preparation, therefore does not, prima facie, fall within the four corners of the aforesaid definition. Consequently, at this stage, it cannot be conclusively held that the alleged recovery of betel nuts squarely brings the case of the applicant within the prohibitory clause of the Act of 2019. This aspect alone renders the case one of further inquiry within the contemplation of Section 497(2), Cr.P.C., thereby entitling the applicant to the concession of bail.

7. In view of the foregoing discussion, it is evident that the alleged recovery from the applicant consists solely of betel nut (chalia) which, per se, does not fall within the strict definition of “gutka” or “manpuri” as envisaged under Section 2(vii) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. Since the essential element of a mixture or prepared substance injurious to health appears missing at this stage, the case of the applicant, prima facie, calls for further inquiry within the meaning of Section 497(2), Cr.P.C. The applicant is a first-time offender, and nothing has been brought on record to show that he is previously convicted or that he is likely to abscond or tamper with the prosecution evidence if released on bail. In such circumstances, the applicant was admitted to post-arrest bail vide my short order dated 25.09.2025, subject to furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Lacs only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. These are the detailed reasons for the Short Order dated 25.09.2025.

8. Before parting, it is clarified that the observations made herein are purely tentative in nature and shall not influence the trial Court at the stage of recording evidence or deciding the case on merits. Needless to mention, if the applicant misuses the concession of bail, absconds, or attempts to influence or tamper with the prosecution witnesses, the trial Court shall be fully competent

to take appropriate action against him, including cancellation of bail, in accordance with law.

JUDGE

Ahmed/Pa,