IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERBABD

Criminal Bail Application No. S-230 of 2026
[Muhammad Ishtiaque and another v. The State]

Before:
JUSTICE RIAZAT ALI SAHAR

Applicants:	Muhammad Ishtiaue and another through Mr. Saad Salman Ghani, Advocate
Respondent:	The State through Mr. Irfan Ali Talpur, D.P.G. Sindh.
Date of Hearing:	02.03.2026
Date of Judgment:	02.03.2026

JUDGMENT

***RIAZAT ALI SAHAR, J*: -** Through the instant Criminal Bail Application under Section 497 Cr.P.C., the applicants/accused namely Muhammad Ishtiaque and Sultan Ghani seek their release on post-arrest bail in Crime No.20/2026 registered at Police Station Hatri, Hyderabad, for the alleged offence under Section 8 of the Sindh Prohibition of Preparation, Manufacturing and Sale of Mainpuri, Gutka and Mawa Act, 2019.

2. The brief background of the prosecution case, as reflected from the FIR, is that on 21.01.2026 the complainant, who was serving as SIP at Police Station Hatri, Hyderabad, along with other police officials, left the police station for routine patrolling vide Entry No.53 at about 0400 hours. During the course of patrol, at about 0500 hours near Hashmi Hospital situated on the Main Bypass Road, Hyderabad, a Mazda Truck bearing registration No.16106 coming from Karachi side was stopped for checking. Upon inquiry, the driver and the person sitting on the cleaner seat disclosed their names as Muhammad Ishtiaque and Sultan Ghani, the present applicants. During checking of the vehicle, the police

allegedly recovered various cartons containing packets of "Safina", "Race Candy" and "Rajni Supari", which were stated to be narcotic betel nut items. Samples from the recovered items were drawn, sealed and sent for chemical examination, whereafter the applicants were arrested and the present FIR was registered against them under Section 8 of the Sindh Prohibition of Preparation, Manufacturing and Sale of Mainpuri, Gutka and Mawa Act, 2019 at Police Station Hatri, Hyderabad.

3. Learned counsel for the applicants/accused contended that the applicants are innocent persons and have been falsely implicated in the present case by the police officials with *mala fide* intentions. He contended that nothing incriminating was recovered from the personal possession of the applicants and the alleged recovery of cartons containing mainpuri and narcotic supari has been foisted upon them by the police. Learned counsel further submitted that the place of alleged arrest and recovery is a thickly populated area situated on the main bypass road, yet no independent or private mashir was associated with the recovery proceedings and both mashirs cited by the prosecution are police officials, which renders the prosecution story highly doubtful. He further contended that the applicants are poor labourers by profession who were merely travelling in search of employment and had no knowledge about the alleged goods loaded in the vehicle. Learned counsel further contended that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C., as the punishment provided under the relevant provisions of the Sindh Prohibition of Preparation, Manufacturing and Sale of Mainpuri, Gutka and Mawa Act, 2019 is comparatively lesser in nature. He also contended that the applicants have no previous criminal record and are respectable citizens having roots in society; therefore, there is no likelihood of their absconding or tampering with the prosecution evidence. Learned counsel lastly contended that the challan has already been submitted before the trial Court and the applicants are no longer required for further

investigation, hence, they are entitled to the concession of bail. He, therefore, prayed that the applicants may be enlarged on bail.

4. Conversely, learned Deputy Prosecutor General opposed the grant of bail to the applicants and submitted that the applicants were apprehended red-handed by the police party during routine patrolling while transporting a substantial quantity of narcotic supari items in a Mazda truck. He contended that the recovery of cartons containing “Safina”, “Race Candy” and “Regni Supari” was effected from the possession of the applicants and the same were duly secured, sealed and samples were drawn in accordance with law which were subsequently sent for chemical examination. Learned D.P.G. further argued that the applicants themselves disclosed that the recovered items were intended to be sold within the city without any lawful permit, which *prima facie* connects them with the alleged offence. He further submitted that the offence relates to the transportation and sale of prohibited narcotic supari items which have serious implications for public health and order; therefore, the applicants do not deserve the concession of bail. It was lastly contended that the prosecution has sufficient material connecting the applicants with the commission of the alleged offence and the case does not call for further inquiry at this stage. He, therefore, prayed that the instant bail application be dismissed.

5. Heard learned counsel for the applicants, learned Deputy Prosecutor General for the State and have carefully gone through the material available on record. The controversy involved in the present bail application revolves around the tentative assessment of the prosecution case as to whether the applicants are *prima facie* connected with the alleged offence or their case calls for further inquiry within the meaning of Section 497 (2) Cr.P.C.

6. At the very outset, it is pertinent to observe that the offence alleged against the applicants arises out of Crime No.20/2026 registered at Police Station Hatri, Hyderabad under

Section 8 of the Sindh Prohibition of Preparation, Manufacturing and Sale of Mainpuri, Gutka and Mawa Act, 2019. The said provision prescribes punishment which does not fall within the prohibitory clause of Section 497 Cr.P.C. It is by now a settled principle of law that where the alleged offence does not fall within the prohibitory clause, the rule of bail and not jail is to be applied, unless there exist exceptional circumstances which justify the continued detention of the accused. Reference in this regard may be made to the case of ***Tariq Bashir v. The State*** **(PLD 1995 SC 34)** wherein the Honourable Supreme Court of Pakistan held that in offences not falling within the prohibitory clause, bail should ordinarily be granted and refusal thereof must be supported by exceptional circumstances.

7. A tentative assessment of the record further reflects that the alleged recovery was effected from a Mazda truck during routine patrolling by the police party. It is also an admitted position that the mashirs of arrest and recovery cited by the prosecution are police officials themselves and no independent private mashir was associated with the recovery proceedings despite the fact that the alleged place of recovery is situated on the main bypass road near a hospital which appears to be a populated locality. The absence of independent mashirs in such circumstances *prima facie* creates doubt regarding the transparency of the recovery proceedings. At bail stage, such infirmities are sufficient to extend the benefit of further inquiry to the accused.

8. It is also noteworthy that the alleged contraband was recovered from the vehicle and not from the personal possession of the applicants. The prosecution is yet to establish through cogent evidence that the applicants were in conscious possession of the alleged narcotic betel nut items or that they had knowledge about the nature of the goods loaded in the vehicle. Whether the applicants had knowledge and control over the alleged contraband is a matter which can only be determined after recording of

evidence during trial. At this preliminary stage, the available material does not conclusively establish their culpability.

9. Another aspect which carries weight at this stage is that the challan has already been submitted before the trial Court and the applicants are no longer required for further investigation. Their continued incarceration would therefore serve no useful purpose particularly when the trial itself may take considerable time for conclusion. It is well settled that the object of detention before conviction is merely to secure the attendance of the accused during trial and not to punish him in advance.

10. It may also be observed that the applicants are not shown to be previously convicted persons nor have any previous criminal record been placed on record. They are stated to be labourers by profession and permanent residents having roots in society. Nothing has been brought on record by the prosecution to demonstrate that in case of their release on bail they would abscond or attempt to tamper with the prosecution evidence.

11. It is also a settled principle that at bail stage the Court is only required to make a **tentative assessment** of the material available on record without conducting a deeper appreciation of evidence which may prejudice the case of either side during trial. In the present case, the circumstances discussed above, particularly the nature of recovery, absence of independent mashirs and the fact that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C., *prima facie* bring the case of the applicants within the ambit of further inquiry as contemplated under Section 497 (2) Cr.P.C.

12. For the foregoing reasons and keeping in view the settled principles governing the grant of bail, the applicants have made out a case for the concession of bail. The bail application was accordingly **allowed** and the applicants were admitted to post-arrest bail vide short order dated 02.03.2026, subject to furnishing

solvent surety in the sum of Rs.50,000/- (each) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

13. These observations shall not, in any manner, influence or prejudice the learned trial Court while adjudicating the matter on merits, which shall decide the case strictly in accordance with law on the basis of evidence that may be produced before it.

14. **These are the reasons of my short order announced earlier.**

JUDGE

A.C