

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Bail Application No.S-1019 of 2025

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

Respondent : The State through Ms. Sana Memon,
Assistant Prosecutor General, Sindh

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 an offence punishable under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 ("the Act"). The learned Sessions Judge, Badin, had earlier declined the applicant's plea for bail vide order dated 26.08.2025. The present application is, therefore, a continuation of his right to seek bail before this Court.

2. The prosecution case, as narrated in the FIR, is that on 13.08.2025, the complainant/ASI of Police Station Badin along with other police officials, acting on spy information, intercepted a ten-wheeler truck bearing registration No. TAT-192 near Court Road, Badin. Upon search, a huge quantity of contraband was allegedly recovered consisting of 142 bags of betel nut weighing 18 kilograms each (totaling 2556 kilograms), 220 bags of cement, and one white katta (sack) containing 1100 sachets of prepared gutka. The present applicant, who was driving the said vehicle, was apprehended on the spot, while two accomplices managed to flee. From his personal search, Rs.5,000/- were recovered. The recovered material and vehicle were seized and lodged in malkhana, followed by registration of FIR against the applicant on behalf of the State.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated owing to police enmity. He argued that no private mashirs were associated during the alleged

recovery despite the incident occurring at a public place, which creates serious doubt about the genuineness of the proceedings. It was further argued that only five sachets out of 1100 were sent for chemical analysis, leaving the nature of the remaining pieces unverified, thereby reducing the evidentiary value of the alleged recovery. The FIR also fails to disclose the source of procurement, manufacturing site, or intended purchaser, making the prosecution story improbable. It was further submitted that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C., and that there is no likelihood of abscondence, tampering with prosecution evidence, or repetition of offence. Learned counsel thus prayed for the applicant's release on bail, arguing that bail is a rule and refusal an exception. Lastly prayed for grant of bail.

4. Conversely, the learned A.P.G., assisted by the Investigating Officer, opposed the grant of bail, submitting that a huge quantity of injurious substance was recovered from the possession of the applicant, which is sufficient to connect him with the alleged offence. It was argued that the spread of gutka and manpuri poses a grave threat to public health, and therefore the Courts should adopt a stringent approach. The learned A.P.G. further contended that the recovery is corroborated by police officials and that no mala fide or enmity has been established to justify false implication in such a serious matter. Lastly the learned A.P.G. prayed for dismissal of bail.

5. I have heard the learned counsel for the parties and carefully examined the material available on record. Upon tentative assessment, the case presents multiple aspects warranting judicial consideration: (a) It appears that no private mashir was associated with the alleged recovery, despite the incident having taken place at a public location. This omission, though not per se fatal, casts a shadow over the genuineness of the recovery proceedings. It is a settled proposition that while police officials are competent witnesses, in cases involving alleged recovery of contraband, the absence of independent corroboration requires the Court to exercise heightened caution and scrutiny before placing reliance solely on official testimony. (b) The contents of the F.I.R. reveal that the recovered material primarily comprised betel nut (*chalia*). Under the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, the term "prohibited substance" refers to a mixture prepared for human consumption containing injurious ingredients such as tobacco, lime, catechu, or any other additive as defined under Section 2(vii) of the Act. Mere possession or transportation of raw betel nut, without any evidence of admixture or preparation converting it into gutka

or manpuri, does not *prima facie* fall within the mischief of the Act. Thus, the very applicability of the Act to the alleged recovery remains doubtful at this stage. (c) Furthermore, the record indicates that only a few sachets were forwarded for chemical examination, while the remaining alleged contraband remained untested. This selective sampling raises serious concerns regarding the representativeness and evidentiary reliability of the chemical analysis. Unless the entirety of the seized material is established through scientific examination to contain prohibited ingredients, the prosecution's case remains tentative and uncertain. (d) It is also noteworthy that the maximum punishment prescribed under Section 8 of the aforementioned Act is three years, thereby placing the alleged offence outside the ambit of the prohibitory clause contemplated under Section 497(1), Cr.P.C. Jurisprudence consistently holds that where the offence does not fall within the prohibitory clause, the grant of bail is a rule, and its refusal an exception—particularly when the case calls for further inquiry into the applicability of the penal provision itself.

6. The Honourable Supreme Court in ***Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)*** reaffirmed the principle that: *“There is also another important legal aspect of this case, namely, that bail was refused vide the impugned judgment, notwithstanding the fact that the offence of criminal breach of trust punishable under section 406 P.P.C does not fall within the prohibitory clause of section 497(1) Cr.P.C. This refusal becomes questionable when examined in light of the settled principle of law, namely, that in cases involving commission of non-bailable offences not falling within the prohibitory clause of 497(1) Cr.P.C, bail is granted as a rule and refusal is an exception”*. Moreover, in ***Tariq Bashir and 5 others v. The State (PLD 1995 SC 34)***, it was held that in non-prohibitory offences, bail should ordinarily be granted unless the accused is a previous convict, is likely to abscond, or may tamper with evidence. In the present case, none of these exceptional circumstances have been established. The investigation has been completed, challan has been submitted, and all witnesses are police officials; hence, the possibility of tampering with evidence is minimal. The applicant has remained in custody since the time of his arrest, and no useful purpose would be served by keeping him incarcerated for an indefinite period. Furthermore, the alleged recovery of raw chalia (betel nut) does not conclusively fall within the statutory definition of gutka or manpuri. This aspect alone renders the case as one of further inquiry under Section 497(2), Cr.P.C.

7. In view of the foregoing discussion, the applicant has successfully made out a case for further inquiry. Accordingly, by my short order dated 25.09.2025, the applicant Sher Khan son of Gul Adam Pathan was admitted to post-arrest bail subject to his 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.

8. Before parting, it is clarified that the observations made herein are tentative in nature and shall not influence the learned trial Court while 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 evidence, the learned trial Court shall be fully competent to cancel his bail in accordance with law. These are the detailed reasons of the Short Order dated: 26-09-2025.

JUDGE