

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Bail Application No. S-463 of 2026

Applicant : Sadu Zai Khan and Yaa Khan through Mr. Yar Muhammad Mangrio, Advocate

Respondent : The State through Mr. Neel Parkash DPG

Date of Hearing : 29.09.2026

Date of Order : 29.09.2026

ORDER

Muhammad Humayon Khan, J.: Through the instant Criminal Bail Application under Section 497, Cr.P.C., the applicants/accused, Sadu Zai Khan and Yaa Khan, seek post-arrest bail in Crime No.43 of 2026, registered under Sections 3, 4, 5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019, after rejection of their bail applications by the Courts below. The prosecution alleges recovery of five packets containing Safeena sachets and 90 bags containing scented supari/tobacco, weighing 900 kilograms, from a 12-wheeler dumper in which the applicants were travelling. The applicants primarily seek bail on the grounds that the alleged search, seizure and arrest were conducted by an Assistant Sub-Inspector whose statutory competence under Sections 14 to 16 of the Act is disputed, that no independent private person was associated as mashir, that conscious possession of the recovered articles is yet to be established, and that the alleged offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C., thereby calling for further inquiry under Section 497(2), Cr.P.C.

2. Briefly stated, the prosecution case is that on 17-08-2026, the complainant, an Assistant Sub-Inspector posted at Police Station Khan, along with other police officials, left the police station for patrolling vide Daily Diary Entry No.13 at about 0030 hours. During patrol, the police allegedly received spy information that a 12-wheeler dumper coming from Mirpurkhas towards Nawabshah was carrying prohibited substances. Acting upon such information, the police party reached Deh Fuzdu Mori, where at about 0500 hours it intercepted dumper bearing registration No. JT-5100, in which the present applicants were travelling. Upon search, five packets of Safeena were allegedly recovered from a black shopping bag, whereas 90 bags containing scented supari/tobacco were

allegedly recovered from a secret cavity of the dumper, each bag weighing 10 kilograms and making a total alleged recovery of 900 kilograms. As no private person was allegedly available, police officials HC Asghar Ali and PC Majeed Usman were associated as mashirs; the applicants were arrested, the alleged property was secured and sealed, and consequently Crime No.43 of 2026 was registered under Sections 3, 4, 5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. The applicants unsuccessfully sought post-arrest bail before the learned Consumer Protection Judge & Judicial Magistrate, Mirpurkhas, and thereafter before the learned Additional Sessions Judge-II, Mirpurkhas, whereupon they approached this Court through the instant bail application.

3. Learned counsel for the applicants contended that the applicants are innocent and have been falsely implicated in the present case; that the entire alleged search, seizure and arrest proceedings were conducted by the complainant, who admittedly holds the rank of Assistant Sub-Inspector, whereas Sections 14, 15 and 16 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019 contemplate exercise of such powers by an officer not below the rank of Sub-Inspector or an officer duly authorized in that behalf, and no such authorization is available on record. He further contended that despite the alleged recovery having been effected from a road/locality, no independent private person was associated as mashir; that the alleged recovery from a secret cavity of a commercial dumper, by itself, does not establish conscious and exclusive possession of the applicants; and that material discrepancies exist regarding the quantity and description of the allegedly recovered Sufenia sachets. Lastly, he submitted that the offence under Section 8(1) of the Act carries a maximum punishment of three years and, therefore, does not fall within the prohibitory clause of Section 497(1), Cr.P.C.; hence, the case of the applicants, at the very least, calls for further inquiry under Section 497(2), Cr.P.C. He accordingly prayed that the applicants be admitted to post-arrest bail.

4. Conversely, learned Deputy Prosecutor General opposed the application and contended that the applicants were apprehended at the spot while travelling in the 12-wheeler dumper from which a substantial quantity of prohibited material, including 90 bags weighing about 900 kilograms, besides packets of Safeena, was allegedly recovered; therefore, sufficient material is presently available to connect them with the commission of the alleged offence. He further contended that the questions relating to conscious possession, legality of the search and seizure, and evidentiary worth of the recovery are matters to be determined by the trial Court after recording evidence and cannot be finally adjudicated at the bail

stage. He maintained that mere non-association of private persons as mashirs would not, by itself, render the police recovery doubtful at this tentative stage. He, therefore, prayed that the bail application be dismissed.

5. I have heard learned counsel for the applicants as well as learned Deputy Prosecutor General for the State and have perused the material available on record with their assistance. Since the present proceedings relate to post-arrest bail, the material is required to be examined only tentatively and no deeper appreciation of evidence or final determination touching upon guilt or innocence of the applicants is permissible at this stage.

6. The prosecution case, in substance, is that on 17-08-2026 the police party headed by the complainant/ASI, while on patrol, received spy information regarding a 12-wheeler dumper allegedly transporting prohibited substances. The vehicle was intercepted at about 0500 hours and, according to the prosecution, five packets of Safeena and 90 bags of scented supari/tobacco weighing about 900 kilograms were recovered from the vehicle, whereafter the applicants were arrested and the case property was secured. Admittedly, the recovery proceedings were witnessed by police officials and no private person was associated as mashir. Pasted text

7. At the outset, it is significant that the applicants are booked under sections 3, 4, 5 and 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019. Section 8(1) provides, in the case of an ordinary contravention of sections 3 to 7, imprisonment which may extend to three years, though not less than one year, together with fine. The enhanced punishment extending to ten years under section 8(2) relates to a subsequent offence. Nothing presently placed before this Court suggests any previous conviction of either applicant attracting that enhanced provision. Thus, for the purpose of the present tentative assessment, the offence carries a maximum imprisonment of three years and does not fall within the prohibitory limb of section 497(1), Cr.P.C.

8. The principle governing such cases is no longer res integra. In *Tariq Bashir and 5 others v The State* PLD 1995 SC 34, the Honourable Supreme Court classified offences carrying imprisonment of less than ten years as falling outside the prohibitory clause and held that, ordinarily, grant of bail in such cases is the rule whereas refusal is an exception. The same principle was reiterated in *Zafar Iqbal v Muhammad Anwar and others* 2009 SCMR 1488, where the Supreme Court also emphasized that pre-trial incarceration should not be converted into punishment.

9. Again, in *Muhammad Tanveer v The State and another* PLD 2017 SC 733, the Honourable Supreme Court reiterated that the rule of granting bail in offences outside the prohibitory clause is to be followed in letter and spirit. The principle has subsequently been reaffirmed in *Sheikh Abdul Raheem v The State and another* 2021 SCMR 822 and *Abdul Saboor v The State and another* 2022 SCMR 592.

10. More importantly, the Honourable Supreme Court in *Muhammad Imran v The State* PLD 2021 SC 903 identified the principal exceptional circumstances which may justify refusal of bail in a non-prohibitory offence, namely likelihood of abscondence, apprehension of tampering with prosecution evidence or influencing witnesses, or likelihood of repetition of the offence having regard to previous criminal record or the manner in which the offence was allegedly committed. The prosecution is required to demonstrate from the available material that the case falls within one of such exceptions. In the present matter, no previous conviction has been attributed to either applicant and nothing tangible has been pointed out to show that, if released, they would abscond, tamper with the case property, influence the official witnesses or otherwise obstruct the trial. The alleged recovered articles are already in official custody.

11. There is another aspect of the case which cannot altogether be brushed aside at this stage. The FIR itself, as reproduced in the record, shows that the complainant is an Assistant Sub-Inspector, who allegedly received the information, intercepted the dumper, searched the applicants and vehicle, effected the recovery, seized and sealed the case property and arrested the applicants. Pasted text Section 14(1) of the special Act refers to an officer not below the rank of Sub-Inspector of Police or equivalent authorised in that behalf by the Home Department for exercise of the special powers of entry, search, seizure and arrest without warrant. Section 15 thereafter refers to an officer authorised under section 14 for seizure and arrest in public places or transit, whereas section 16 authorises an officer referred to in section 14 to stop and search a conveyance.

12. It must be clarified that the objection is not to be understood merely as an argument that an ASI could not *register an FIR*. The material question is whether the special statutory powers of interception, search, seizure and arrest under sections 14, 15 and 16 could lawfully be exercised by the complainant/ASI in the circumstances alleged by the prosecution and whether any requisite authorisation existed. No such authorisation is referred to in the FIR or in the material reproduced before this Court. This issue need not, and indeed ought not, be finally determined while deciding bail; nevertheless, it is plainly a legal question which cannot

presently be answered against the applicants without recording evidence and examining the relevant authorisation, if any. It therefore furnishes an additional circumstance attracting further inquiry within the meaning of section 497(2), Cr.P.C.

13. There is direct judicial precedent under the same special statute. In *Karam Khan and another v The State, Criminal Bail Application No.S-635 of 2021, decided on 24-12-2022*, the Sindh High Court, Sukkur Bench, dealt with a case where 93 sacks weighing **2045 kilograms** were allegedly recovered from a vehicle. The defence specifically raised the plea that the FIR/recovery proceedings had been undertaken by an ASI notwithstanding section 14(1). The Court noted that the offence carried punishment of three years, fell outside the prohibitory clause and ultimately granted post-arrest bail on further inquiry. The significance of this authority for the present case is evident: the mere magnitude of the alleged recovery cannot, by itself, transform a statutorily non-prohibitory offence into one falling within the prohibitory clause.

14. Likewise, in *Muhammad Riaz and Muhammad Zaman v The State, Criminal Bail Application No.S-322 of 2020, decided on 13-07-2020*, the same Court considered the specific plea that an ASI had carried out the exercise despite section 14(1) of the special Act referring to an officer not below the rank of Sub-Inspector. Post-arrest bail was granted under section 497(2), Cr.P.C. after considering, inter alia, the statutory punishment and absence of exceptional circumstances requiring continued detention.

15. A similar approach was adopted in *Rehmatullah and another v. The State, Criminal Bail Application No.S-779 of 2023, decided on 18-08-2023*, where a substantial quantity of Safina Gutka was allegedly being transported in a car. Despite the prosecution's plea that a huge quantity of an injurious substance was involved, the Sindh High Court held that section 8 carried a maximum punishment of three years, applied the rule relating to non-prohibitory offences and admitted the accused to bail. Similarly, in *Abdul Aziz v The State, Criminal Bail Application No.S-720 of 2023, decided on 25-08-2023*, post-arrest bail was extended in a case involving transportation of Mainpuri/Gutka after noting the three-year maximum punishment and the principles governing non-prohibitory offences.

16. The prosecution has placed considerable emphasis upon the alleged recovery of 900 kilograms. Undoubtedly, the quantity alleged is substantial and the adverse consequences which prohibited Gutka/Mainpuri substances may have for public health cannot be ignored. However, bail has to be determined according to the statutory criteria embodied in section 497, Cr.P.C. The quantity of an alleged

recovery may be a relevant circumstance, but it cannot by itself enlarge the punishment prescribed by the Legislature or automatically bring an otherwise non-prohibitory offence within the prohibitory clause. This is particularly so when *Karam Khan* involved an alleged recovery exceeding two tonnes, yet bail was extended in view of the statutory punishment and surrounding circumstances.

17. As regards conscious possession, the alleged recovery was not made from the physical person of either applicant; rather, the bulk recovery is stated to have been found in a purported secret cavity of a commercial 12-wheeler dumper. Whether both applicants knew of the existence and contents of such cavity, who owned or controlled the vehicle, who loaded the alleged bags and whether each applicant possessed the requisite knowledge and control are questions which require evidence. Mere presence in the vehicle is a circumstance available to the prosecution, but its legal effect and whether it proves conscious possession are matters for the trial Court and cannot be conclusively presumed against the applicants at the bail stage. The applicants have specifically raised these questions in their bail application. Pasted text

18. The circumstance that no independent private person was joined in the recovery also requires consideration. The FIR itself states that the police officials were made mashirs because private persons were allegedly unavailable. Pasted text It is settled that evidence of police officials is not liable to rejection merely because of their official status; therefore, the absence of a private mashir, standing alone, would not justify release on bail. However, when the alleged recovery is from a conveyance intercepted on a road and the prosecution case rests substantially upon the official witnesses who themselves participated in the interception, search and seizure, the circumstance may legitimately be considered along with the other factors noticed above for deciding whether the matter calls for further inquiry. The Sindh High Court has treated comparable absence of private witnesses as a relevant tentative circumstance in Gutka/Mainpuri bail proceedings.

19. There also appears, from the material placed before this Court, an apparent inconsistency concerning the exact number and description of the Safeena sachets allegedly recovered and separated as samples. The applicants have specifically pointed out that the prosecution narration and the impugned order do not describe the quantity in an entirely uniform manner. Pasted text Whether this discrepancy is merely clerical or has any bearing upon the identification, sampling or integrity of the case property can only be determined after evidence. It would be inappropriate at this stage either to accept the discrepancy as fatal to the prosecution or to dismiss it as inconsequential without trial.

20. The submission of the learned DPG that the alleged offence is injurious to society is undoubtedly relevant from the standpoint of enforcement of the statute; however, seriousness of the social evil cannot substitute the legal requirements governing personal liberty and bail. The Legislature itself has prescribed the punishment for a first offence under section 8(1), and the Court is bound to apply section 497, Cr.P.C. according to that punishment and the material attributable to the particular accused. Indeed, the Sindh High Court rejected substantially similar opposition by the State in *Karam Khan and Rehmatullah*, where the prosecution had relied upon the magnitude of recovery and the harmful nature of the substances.

21. On a tentative assessment, therefore, the following circumstances operate cumulatively in favour of the applicants: the offence, as presently charged, carries a maximum imprisonment of three years and falls outside the prohibitory clause; no previous conviction attracting the enhanced punishment has been shown; the legal competence/authorisation of the ASI to exercise the special powers under sections 14 to 16 requires examination; conscious possession of the material allegedly concealed in the dumper requires evidence; the recovery is witnessed entirely by police officials; and no exceptional circumstance contemplated by the law for denial of bail in a non-prohibitory offence has been demonstrated. These circumstances are sufficient, at the least, to bring the case within the ambit of **further inquiry under section 497(2), Cr.P.C.**

22. Before parting, it may be reiterated that the Honourable Supreme Court in *Tariq Bashir PLD 1995 SC 34*, *Zafar Iqbal 2009 SCMR 1488*, *Muhammad Tanveer PLD 2017 SC 733*, *Sheikh Abdul Raheem 2021 SCMR 822*, *Muhammad Imran PLD 2021 SC 903* and *Abdul Saboor 2022 SCMR 592* has consistently protected the principle that detention pending trial is not to be employed as punishment and that, in offences outside the prohibitory clause, refusal of bail must rest upon legally recognised exceptional circumstances.

23. For the foregoing reasons, the applicants have succeeded in making out a case for the concession of post-arrest bail. Consequently, the instant Criminal Bail Application is **allowed**. Applicants/accused **Sadu Zai Khan and Yaa Khan** shall be released on bail, subject to furnishing solvent surety in the sum of **Rs.200,000/- (Rupees Two Hundred Thousand only) each** and P.R. bonds in the like amount to the satisfaction of the learned trial Court.

24. The applicants shall attend the trial on each and every date of hearing and shall not misuse the concession of bail, tamper with the prosecution evidence or attempt to influence any prosecution witness. In the event of misuse of the

concession, the learned trial Court shall be at liberty to proceed for cancellation of bail in accordance with law without making a reference to this Court.

25. The learned trial Court is expected to proceed with the matter expeditiously and shall avoid unnecessary adjournments. The prosecution shall ensure attendance of its witnesses on the dates fixed by the trial Court so that the trial may reach its logical conclusion without avoidable delay.

26. Needless to observe that all observations made hereinabove are tentative in nature, confined strictly to the disposal of the present bail application, and shall not influence the learned trial Court while appreciating the evidence and deciding the case on its own merits.

The Criminal Bail Application stands disposed of in the above terms.

JUDGE

Faisal