

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Crl. Bail Application No.S-447 of 2026

Applicant : Ahsan through Mr. Muhammad Yousuf Mangrio, advocate.

Respondent : The State through Mr. Neel Parkash, Deputy Prosecutor General Sindh.

Date of Hearing : 09.09.2026

Date of Order : 09.09.2026

ORDER

Muhammad Humayon Khan, J.: This is a pre-arrest bail application under Section 498 Cr.P.C seeking enlargement of the Applicant on bail in Crime No.213/2026 under sections 4, 5 and 8 of Sindh Prohibition of Preparation, Manufacturing, Store, Sale and Use of Gutka and Mainpuri Act, 2019 registered at P.S Umerkot City. The applicant had originally sought pre-arrest bail before the learned Sessions Judge, Umerkot, which was declined vide order dated 10.08.2026, whereafter he filed the present application before this Court.

2. The precise allegation against the applicant may be stated as follows:

i) That on 06.08.2026, complainant ASI Imran Khan while on routine snap checking duty alongwith other police officials near Addito Watercourse Bus Stop on Umerkot-Dhoronaro Road, allegedly noticed a long-chassis jeep bearing Registration No.E-0016 coming from Dhoronaro side;

ii) That three persons allegedly travelling in the vehicle, identified by the police as the present applicant Ahsan son of Aziz and co-accused Khadim Hussain and Ali Nawaz alias Baboo, allegedly fled from the spot by taking advantage of darkness;

iii) That the police allegedly attempted to apprehend them, but they succeeded in escaping;

iv) That thereafter the police searched the abandoned vehicle and allegedly recovered sacks containing 24,000 sachets of Aadab Gutka, 3,300 sachets of Safina Gutka and 3,300 sachets of Vimal Gutka.

v) That due to non-availability of private persons, police officials were associated as mashirs of recovery, samples were separated and sealed for chemical analysis and the remaining property was sealed separately.

3. Learned counsel for the applicant has contended that the applicant is innocent and has been falsely implicated due to malafide and ulterior motives; that the applicant was not apprehended at the place of incident; that nothing incriminating was recovered from his personal possession; that no independent or private person was associated as mashir of the alleged recovery; that the alleged offence does not fall within the ambit of the prohibitory clause of Section 497 Cr.P.C. Lastly, he prayed for confirmation of the interim pre-arrest bail already granted to the applicant.

4. Conversely, learned Deputy Prosecutor General for the State opposed confirmation of pre-arrest bail and submitted that the applicant is a habitual offender, having previously been involved in two criminal cases of similar nature, therefore, he is not entitled for grant of bail.

5. After hearing learned counsel for the applicant and learned Deputy Prosecutor General for the State, and going through the record, I am inclined to grant bail for the following reasons:

i) Admittedly, the applicant was not arrested at the spot. According to the prosecution itself, the persons travelling in the vehicle managed to escape after seeing the police party. Therefore, nothing incriminating was recovered from the personal possession of the applicant.

ii) The prosecution case further shows that the applicant escaped by taking advantage of darkness and the entire recovery was made from the vehicle after the applicant had fled away.

iii) Nothing was recovered from the person of the applicant which could independently connect him with the alleged offence. The engine and chassis numbers of the vehicle are stated to have been rubbed and were not visible. The prosecution would, therefore, also have to establish through evidence the ownership, custody or control of the vehicle and its nexus with the applicant.

iv) No private person was associated as mashir of the alleged recovery and police officials themselves acted as mashirs. The evidentiary value of such recovery proceedings is a matter for the learned Trial Court to examine after recording evidence and cannot be finally determined at this stage.

v) Learned D.P.G has also relied upon the applicant's involvement in two previous cases of similar nature. The previous involvement may be a relevant circumstance; however, mere registration or pendency of earlier cases cannot by itself establish the applicant's guilt in the present case.

vi) The alleged offences do not fall within the prohibitory clause of Section 497(1) Cr.P.C. It is well settled that in offences falling outside the prohibitory clause, grant of bail is the rule and refusal is an exception, unless exceptional circumstances exist. Reference may be made to *Muhammad Tanveer v. The State and another* (PLD 2017 SC 733).

vii) In view of the absence of personal recovery, the circumstances surrounding the alleged identification of the applicant, and the requirement to establish his connection with the vehicle and conscious possession of the contraband, the matter appears to call for further inquiry within the meaning of Section 497(2) Cr.P.C.

viii) It is also settled that where an accused otherwise appears entitled to post-arrest bail, he should not ordinarily be sent behind bars merely as a formality before permitting him to seek post-arrest bail. Reference may be made to *Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427).

4. For these reasons, this application is allowed and the interim pre-arrest bail granted to the applicant vide order dated 18.08.2026 is hereby confirmed on the same terms and conditions and on the surety already furnished by him. However, in the event that the applicant is found misusing the concession granted by this order, the learned Trial Court shall be at liberty to recall the bail of the applicant and proceed in accordance with law. Learned trial court is directed to conclude the trial within 03 months.

5. It is clarified that the observations made above are tentative in nature and shall not prejudice the case on merits, which shall be decided by the learned Trial Court independently on the basis of evidence brought before it.

JUDGE

Faisal