



prosecution contained substandard betel nuts and other things allegedly injurious to human health. The FIR was registered on 09.04.2020, whereas, as informed, the samples were forwarded to the laboratory on 17.04.2020 and received by the laboratory on 18.04.2020. This delay of eight days has not been explained and while confronted the I.O. is not in a position to justify.

- ii) It further appears that despite passing of more than 23 days the report has not been received and it is not clear that as to whether the substance found and allegedly recovered from the Applicants is in fact gutka manpuris and is injurious to health and punishable with the offence so alleged.
- iii) Even otherwise, the punishment provided under Section 8 of the Act may extend to a maximum of three years but shall not be less than one year and does not falls under the prohibition clause.
- iv) Though the learned Additional Prosecutor General has opposed the grant of bail on the ground that this is a special Act regarding use of gutka and manpuri which is injurious to health; and is a crime against society; therefore, even if it does not fall under the prohibition clause; bail must not be granted. Though there is no cavil to this settled proposition; however, while deciding a bail application, the Court is required to look into this aspect on the basis of the facts and circumstances of each case before it. The rule is not absolute either way. In the present case, when the chemical laboratory's report has not yet received nor the Court has been assisted as to how much more time would it take, this objection does not appear to be so convincing so as to keep the Applicants behind bars under presumption that he was carrying some material which is injurious to health.

- v) Even otherwise, the Honourable Supreme Court in Criminal Petition No. 299/2020 while dealing with grant of bail to under trial prisoners in the current pandemic and the lockdown has also approved certain recommendations of the learned Attorney General of Pakistan and the case of the present Applicants apparently also falls within such recommendations.
- vi) As to delay in sending samples for laboratory tests, (though in Narcotics cases but the ratio applies herein as well), it has been consistently held by the Hon'ble Supreme Court and this Court, that such delay is crucial and an accused cannot be convicted once it is established that no safe custody of the material was established. The I/O present in Court has been confronted on this; however, he has not been able to satisfy the Court about delay and how the recovered material was kept in safe custody.

In view of hereinabove facts and circumstances of this case the Applicants have made out a case of further inquiry as to their alleged guilt, and are accordingly admitted to bail on their furnishing surety in the sum of Rs. 30,000/- (Thirty Thousand Only) each with P.R. bond in the like amount to the satisfaction of the Trial Court. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law.

**J U D G E**

Arshad/