

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Bail Application No. 614 of 2020**

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Date	Order with signature of Judge
	For hearing of bail application.
Heard on	: 13.05.2020
Decided on	: 13.05.2020
For Applicant	: Khawaja Muhammad Azeem, Advocate.
For State	: Ms. Amna Ansari, Addl. P.G. alongwith Inspector/I.O Ameer Bux Khoso, PS Garho, Thatta, Sindh.

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**Kausar Sultana Hussain, J**:-Through this bail application, applicant/accused Muhammad Hashim son of Ali Muhammad Memon has sought post arrest bail in case FIR No.20/2020, for offence punishable under Section 8 The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and use of Gutka and Manpuri Act, 2019 herein after called (S.P.P.M.S.S.U) Gutka, ManPuri Act, 2019 registered at P.S. Garho, after his bail application has been declined by the learned 2<sup>nd</sup> Additional Sessions Judge, Thatta. Hence this bail application.

2. Per contents of the FIR, on 12.04.2020, the complainant Inspector Ameer Bux Khoso alongwith his subordinate staff during patrolling arrested the above named applicant / accused and recovered 19 bundles and 100 small puries each and 100 empty sachet of Zafar Shah Jehan Pati (Tobacco), these were 2000 in number, which were found to be dangerous for health and life.

3. Learned counsel for the applicant/accused contended that applicant/accused is innocent and the recovery has been foisted upon

him by the police; that no independent private person has been associated by the complainant to witness the alleged recovery which is clear violation of mandatory provision of section 103 Cr.P.C.; that the alleged offence is punishable for three years being maximum with fine, which does not fall in the prohibitory clause of 497 (i) Cr.P.C, as such the applicant/accused is entitled for concession of bail. He further contended that all the PWs in this case are subordinate of the complainant, therefore, false implication of the applicant/accused in the alleged offence cannot be ruled out. He also contended that the applicant is in jail since his arrest and he is no more required for further investigation. He lastly contended that case requires further inquiry; therefore, he prays for grant of post-arrest bail.

4. Learned Addl. P.G while opposing of post arrest bail plea contended that the offence committed by the applicant / accused of having Tobacco is injurious against the public health.

5. I have heard the learned counsel for the applicant as well as learned Addl. P.G appearing for the State and perused the material so available before me.

6. It is observed that whole case of the prosecution is based upon the evidence of police officials and no private independent witness has been associated. The evidence of police officials is required to be scrutinized minutely at the time of trial whether the alleged offence has taken place in a fashion as stated in the FIR or not. The involvement of the applicant under section 8 S.P.P.M.S.S.U Gutka, Manpuri Act, 2019, is to be proved by the prosecution after recording evidence. The applicant is no more required for further investigation

and he is behind the bars since his arrest i.e. 12.04.2020; hence, his incarceration will serve no useful purpose. Besides the case of prosecution is not about recovery of Gutka or Mainpuri or derivative as defined in clause (VI) and (VIII) of section 2 of this Act, 2019. Before discussing further the merit of this bail application I would like to reproduce here the definition of derivative Gutka and manpuri as provided in section (2) as clause VI and (VIII) of this Act of 2019.

(vi) "derivative" means any mixture under any name viz; panparag, gutka or such other mixture which is prepared or obtained by any series of operations from the ingredients as given in clause- (viii)

Section 2(VIII) "gutka" and "manpuri" means :-

(a) Any mixture which contains any of the forms of chalia (Betel nut), catechu, tobacco, lime and other materials as its ingredients which is injurious to health and not fit for human consumption within the meaning of section 5 of the Sindh Pure Food Ordinance, 1960 and is also in contravention to the provisions of rule 11 of the Sindh Pure Food Rules, 1965.

7. Per definition of "Gutka: and Manpuri" it is a mixture of chalia (Betel nut) catechu, tobacco, lime and other material injurious to health and not fit for human consumption. In instant matter police allegedly recovered "tobacco" from the possession of applicant / accused in quantity of 19 bundles and 100 small puries of tobacco. Admittedly, the tobacco, is one of the ingredients of Gutka and manpuris but in exclusive shape / separately it cannot be called as

Gutka or manpuri. The law of Gutka and Manpuri, 2019 deals with prohibition of Preparation, manufacturing storage, sale and use of Gutka and manpuri as defined in clause (VI) and (VIII) of section 2 of this Act, 2019. Section 15(b) of the Act, 2019 deals with the detention and search of any person, whom an officer authorized under section 14 of the Act, 2019 (An officer not below the rank of sub-inspector of police or equivalent authorized in this behalf by Home Department, Government of Sindh), has reasons to believe to have committed an offence punishable under this Act and if such person has any substance as defined in clause (VI) and (VIII) of section 2 in his possession and such possession appears to him to be unlawful, while per contents of present FIR only "tobacco" in raw form was recovered which defiantly does not fall within the definition of Gutka, manpuri and derivative as defined in clause (VI) and (VIII) of section 2 of this Act.

8. In view of the foregoing, learned counsel for the applicant has made out a case of further enquiry within the meaning of subsection 2 of section 497. Accordingly, the instant bail application is allowed. The applicant/accused named above be released, subject to furnishing his solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and P.R. Bond in the like amount to the satisfaction of the learned trial Court.

9. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the applicant if he will be found misusing the concession of bail.

10. This Criminal Bail Application stands disposed of in the same terms.

11. The above are the reasons of my short order dated 13.05.2020.

J U D G E

Fahim/PA