

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI
Cr. Bail Application No. 1649 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

For hearing of Bail Application.

25-11-2019

Mr. Mr. Imamuddin Chandio, Advocate for the Applicants.
Mr. Zaffar Ahmed Khan, APG.

The Applicants have been booked in FIR No.637 of 2019 under sections 269/270/337-J/34 PPC, registered at Police Station, Sachal, Malir Karachi. They were denied bail by the learned Additional Sessions Judge-V, Malir, Karachi vide order dated 07-11-2019; hence this bail application.

Per the FIR, it was at about 05:00 hours on 14-10-2019 when the Applicants carrying shopping bags near the Super Highway were searched by the patrolling police to recover 16 packets, each containing 10 to 15 smaller packets of *mawa/gutka* from the shopping bag carried by Karim Gul, and 27 packets containing 1415 smaller packets of *mawa/gutka* from the shopping bag carried by Abdul Aziz.

Per learned counsel for the Applicants, the alleged substance has been foisted on the Applicants and that there are no independent witnesses to the recovery as required of section 103 Cr.P.C. Per the learned Additional Prosecutor General the packets have been sent for chemical examination but the chemical report is still awaited.

Out of the alleged offences, sections 269 and 270 PPC are bailable offences while section 337-J PPC, ie. causing injury by means of poison, is a non-bailable offence.

Whether the association of witnesses from the locality as required by section 103 Cr.P.C. is applicable to a road-side search of a person, which is different from the search of a person while conducting a search of a place, I leave that question for examination by the trial court lest the case of the Applicants be prejudiced by any

such observation. For the present purposes suffice to observe that while alleging the offence of section 337-J PPC (causing injury by poison), the FIR does not allege that at the time of arrest the *mawa/gutka* was being given/delivered/provided by the Applicants to another person so as to cause or result in injury. In these circumstances, the Applicants have made out a case for further inquiry falling within the ambit of sub-section (2) of section 497 Cr.P.C. Therefore, the Applicants are admitted to bail subject to depositing solvent surety in the sum of Rs.50,000/- [Rupees Fifty Thousand Only] each along with P.R. Bond in like amount to the satisfaction of the trial court. Application is disposed of in the said terms.

Needless to state that the observations herein are tentative and shall not prejudice the case of either party at trial.

JUDGE

*HYDER/PA**