

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr.Bail.Appl.No.S- 1390 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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03.02.2020.

Mr. Mian Taj Muhammad Keerio, Advocate for applicant alongwith applicant (on interim bail).

Ms. Rameshan Oad, A.P.G. for the State.

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Through this bail application, applicant seeks pre-arrest bail in Crime No.210 of 2019 registered u/s 269, 270, 273 & 337-J PPC at P.S Tando Adam City.

2. The allegation against applicant / accused per FIR is that on 03.09.2019 at 2000 hours near Latif Gate Taluka Tando Adam, he was found in possession of a bag containing 500 Sachets of Mava Gutka and 315 Sachets of Safina Gutka. He was apprehended by ASI Muhammad Achar Bhangwar of P.S Tando Adam City.

3. Mr. Keerio submits that applicant was allegedly found in possession of a bag containing 500 Sachets of Mava Gutka and 315 Sachets of Safina Gutka; however, after recovery and his arrest he was bailed out by police themselves on an undertaking given by their Nekmard of locality as at the time of alleged offence viz. 03.09.2019, the judgment passed by this Court in C.P.No.D- 868 of 2019 was not in field and subsequently it was delivered on 03.10.2019, therefore at the time of challan Section 337-J PPC has been added, hence, the applicant feeling apprehension of his arrest at the hands of police had approached to Sessions Judge concerned where his request for bail was turned down by means of order dated 05.11.2019, hence, has approached this Court through this bail application. The main contention of learned counsel for applicant is that neither the applicant manufactured the

alleged Gutka nor was found selling it in public thorough place which is main aspect of the judgment (supra). He further submits that mere positive report issued by concerned laboratory does not constitute any offence or proof that applicant was selling or manufacturing and was administering the same to any person who allegedly had made any complaint against him before the police. He further submits that basic ingredients of Section 337-J PPC are lacking in this case. He therefore, submits that applicant being innocent has been falsely implicated by police, therefore, interim pre-arrest bail granted to him earlier may be confirmed. In support of his contention he has placed reliance upon the case of Hafiz Mohammad Shehzad v. The State (2019 MLD 1588).

4. On the other hand, learned A.P.G. opposes bail application on the ground that huge quantity of Gutka was secured from applicant and such act for which he was found doing is hazardous as well injurious to the lives of community particularly for young generation. She; however, could not controvert as to whether any consumer or customer who allegedly had purchased the Gutka from him was found nearby to him and subsequently was examined.

5. Heard arguments. Record perused.

6. I have gone through judgment passed by this Court (supra) and find that sprit of it is to the extent of selling and manufacturing. In this case, police have failed to examine any person who allegedly was found purchasing Gutka from applicant and / or the applicant was administering the same to him and such complaint has ever been made by any person from society to show that applicant had been involved in such an injurious case. Since the applicant has been enjoying liberal life after grant of bail to him by 1st forum as well by this Court and the offence with which he has been charged is yet to be established by prosecution after recording evidence. Mere fact that offence carries or involved with maximum punishment does not intercept the way to

withheld concession of bail to him. It is settled law that every accused is presumed to be blue eye boy of law until and unless he is found guilty of charge and law cannot be stretched upon in favour of prosecution particularly at bail stage.

7. In view of above discussion, I am of considered view that applicant has successfully made out a good prima facie case for his admission on pre-arrest bail and his case is purely covered by subsection (2) to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. The interim pre-arrest bail already granted to applicant on 11.12.2019 is hereby confirmed on same terms and conditions. The applicant present is directed to continue his appearance before the Trial Court without fail till final decision of main case.

JUDGE

Tufail/PA