

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

Criminal Bail Application No.S-1369 of 2024

Applicant:	Wali Muhammad through Velji Rathore, Advocate and Masood Ahmad Sahito Advocate
Respondent:	The State through Ms. Sana Memon, Assistant Prosecutor General.
Date of hearing:	10.02.2025
Date of decision:	10.02.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- Applicant seeks post arrest bail through this application in Crime No.100 of 2024 registered at Police Station Chamber, under sections 8(i) of the 'Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019' (**Act-2019**). His bail was rejected by the learned magistrate vide impugned Order dated 03.12.2024, hence this bail application.

2. The prosecution case, as lodged by the complainant ASI Rehmatullah, is that on 18.10.2024 during patrolling he intercepted a car bearing No.BPS-252, from which he recovered one sack (*katta*) of Z-21 gutka, containing 80 packets of *gutka*, from the accused weighing 20 kg, and he himself prepared the *mashirnama* and lodged FIR against the accused on behalf of the State.

3. Learned Counsel for the Applicant, at the very outset, submits that the applicant is innocent; he has been involved by the police with *mala fide* intentions; that no private mashir was associated in the recovery proceedings; that all the witnesses are police officials; that alleged articles were foisted upon the applicant and nothing was recovered from his possession; that the accused is behind bars since last almost four months; that weight of each packet is not mentioned in FIR; that section 8(i) of the Act-2019 are punishable up to three years hence the offence does not fall within the prohibitory clause of section 497, Cr.P.C. that his earlier bails were rejected on the ground that he himself was a drug addict, hence the applicant is entitled for grant of bail.

4. Learned APG opposed the application on the grounds that, substantial quantity of hazardous material was recovered from the possession of the applicant therefore the applicant is not entitled for the concession of bail; and merely because the offence does not fall within the prohibitory clause of section 497 Cr.P.C. would not automatically entitle the applicant for bail.

5. Heard and perused the record with the able assistance of the learned counsels, which reflects that the alleged recovery was effected within a populated area, yet no private person was associated as witness to the arrest and recovery proceedings and all the witnesses are police officials, and therefore, there appears much lesser apprehension of tempering the evidence by the accused. The challan has been submitted before the court having jurisdiction and investigation of the case is complete therefore, custody of applicant is not required for any further investigation or recovery. Section 8 provides punishment for violation of section 4 of the Act 2019, as up to 03 years, but shall not be less than 01 year, and fine of Rupees two lac, and as per settled principles, lesser sentence is to be considered while deciding the question of bail. In the present case, even if maximum punishment is considered for the sake of argument, it is 03 years, which does not fall within the prohibitory clause of section 497, Cr.P.C., hence grant of bail in such cases is a matter of right for the accused, while refusal is an exception. Reliance in this regard is placed upon '*Shaikh Abdul Raheem v. The State*¹ and others, '*Muhammad Tanveer v. State*², '*Zafar Iqbal v. Muhammad Anwar*³, '*Shahmorro v. The State*⁴, and '*Tarique Bashir v. State*⁵. Moreover, the grounds for denial of bail are, the likelihood of the petitioner's abscondence to escape trial; his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or his repeating the offence keeping in view his previous criminal record. The prosecution has to show if the case of the petitioner falls within any of these exception on the basis of the material available on the record, as held by Supreme Court in Order dated 05.08.2021 in '*Muhammad Imran v. The State*'. Needless to mention that deeper appreciation of evidence would not be permissible, at the stage of hearing of bail application, as held in '*Muhammad Eidan v. The State*⁶.

1. 2021 SCMR 822
2. PLD 2017 SC 733
3. 2009 SCMR 1488.
4. 2006 YLR 3167
5. PLD 199 SC 34
6. 2022 P.Cr.L.J 143

Based upon the above tentative assessment of the record, case of further inquiry was made out by the Applicant, who was admitted to bail vide short Order dated 10.02.2025, subject to furnishing solvent surety in the sum of Rs.50,000/- (Fifty Thousand only) and PR bond in the like amount, to the satisfaction of the learned trial court and these are the reasons for the same. The bail application stands allowed, in the above terms.

J U D G E