

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Bail Application No. 93 of 2025

[Mirwais Khan & another v. The State]

Applicant : Mirwais Khan son of Asad Khan through
Mr. Muhammad Iqbal Riaz, Advocate.

Respondent : The State, through Mr. Zulfiqar Ali Arain,
Advocate.

Mr. Muhammad Khalid Javed Raan, Deputy
Attorney General for Pakistan.

Date of hearing : 09-05-2025

Date of decision : 09-05-2025

FIR No. 07/2024-25

U/s: 2(s), 16 and 157 of the Customs Act, 1969

*Punishable under clauses (8), (85) and (89) of Section
156(1) and 157(2) of the Act ibid*

P.S. Collectorate of Customs Enforcement

ASU-II, Hyderabad.

ORDER

Adnan Iqbal Chaudhry J. - The Applicant seeks post-arrest bail in the aforesaid crime after the same has been declined by the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi by order dated 26.03.2025.

2. Heard learned counsel and perused the record.

3. The FIR is that the Anti-Smuggling Unit, Hyderabad received a tip that a consignment of smuggled Indian-origin gutka was being transported from Karachi to Hyderabad in a jeep bearing registration No. BD-0414; that on 04.03.2025, said jeep was detected near the Jamshoro Toll Plaza and signaled to stop but the driver sped on; that eventually the jeep collided with a barrier and came to a halt whereupon the Applicant was found to be the driver; that 30 bags of Indian-origin gutka namely 'Adab' were recovered from the jeep along with a loaded pistol and walkie-talkie; that the Applicant was therefore arrested for the offence of smuggling. It is further alleged that there were two other persons along with the Applicant namely

Shahmeer Achakzai and Shahzad Baloch who managed to flee the scene.

4. Learned State counsel states that during investigation a service card issued by the Balochistan Police was produced by the Applicant which has yet to be verified by the Balochistan Police along with the pistol recovered from the jeep.

5. Nevertheless, the investigation thus far does not reveal the Applicant to be owner of the jeep transporting the smuggled gutka, nor does the Applicant claim ownership of the gutka. For the offence of smuggling, nothing turns on the fact that the Applicant may be serving in the Balochistan police. Most importantly, the role of co-accused persons said to be riding along the Applicant in the jeep has yet to be ascertained. Therefore, the version of the Applicant that he was merely driving the jeep for the co-accused persons, cannot be ruled out at this stage. Therefore, the case against the Applicant is of further inquiry into his guilt, falling within the ambit of sub-section (2) of section 497 Cr.P.C.

6. The value assigned to the seized gutka is Rs.769,688/-. With that value, the part of clause (8)(i) of section 156(1) of the Customs Act that could be attracted is clause (a) thereof, where the punishment of imprisonment does not exceed two years. The maximum imprisonment prescribed by clause 89 of section 156(1) of the Customs Act also does not exceed six years. In other words, the offence alleged against the Applicant does not fall within the prohibitory clause of section 497 Cr.P.C. and thus grant of bail becomes the rule and its refusal the exception.

7. In view of the foregoing, the Applicant Mirwais Khan son of Asad Khan is granted post-arrest bail in the aforesaid FIR subject to furnishing solvent surety in the sum of Rs. 500,000/- [Rupees Five Hundred Thousand only] alongwith P.R. Bond in like amount to the satisfaction of the trial Court.

Needless to state that the observations herein are tentative, and shall not be construed to prejudice the case of either side at trial.

JUDGE

Karachi

Dated: 09-05-2025

*PA/SADAM