

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1981 of 2025

Applicant : Rehmatullah son of Ramzan Pathan
through Mr. Asadullah Burdi,
Advocate

Respondent : The State, through Mr. Muhammad
Tahir Mangi, A.PG. Sindh

Date of hearing : 20.10.2025

Date of decision : 20.10.2025

ORDER

Jan Ali Junejo, J.- Through this application under Section 497, Cr.P.C., the applicant/accused Rehmatullah S/o. Ramzan Pathan seeks post-arrest bail in Crime No. 532 of 2025 registered at Police Station Gadap City, Karachi, for an offence punishable under Section 8A(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. His earlier bail applications were dismissed first by the learned Judicial Magistrate-IX, Malir (Karachi) vide order dated 19.07.2025, and subsequently by the learned VI-Additional Sessions Judge, Malir vide order dated 24.07.2025. The present application has been filed before this Court following the dismissal of bail of the Applicant.

2. According to the contents of the FIR, on 16.07.2025, ASI Noukar Hussain of Police Station Gadap City, along with HC Sifaruddin, PC Wazir Ali, and DPC Sajjad Hussain, was on routine patrol in the area in a government mobile (SPC-552) under the instructions of the SHO. During patrolling at about 10:40 a.m., when the police party reached near Jameel Memon Colony, Dairy Farm Society, they noticed a person riding a motorcycle No. KQL-9791 in a suspicious manner. The said person was stopped and upon inquiry disclosed his name as Rehmatullah S/o. Ramzan Pathan. On inspection, a blue-coloured bag was found placed on the motorcycle's tank. Due to non-cooperation of the public, no private person was available or willing to witness the proceedings; hence, in the presence of police witnesses, the bag was opened, revealing ten black plastic shoppers, each containing one kilogram of Gutka/Mawa prepared in sachets, weighing in total 10 kilograms. The recovered substance was described as injurious to health and was sealed on the spot. From the applicant's personal search, a mobile phone and Rs.500/- cash were also

recovered. Four sachets from the recovered material were separated for chemical examination, and the remaining quantity, along with the motorcycle, was taken into police custody. The applicant was arrested on the spot, and a formal FIR bearing No. 532 of 2025 was registered under Section 8A(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019.

3. The learned counsel for the Applicant argues that the Applicant is innocent and has been falsely implicated in the present case due to his refusal to pay illegal gratification. He further contends that no independent or private witness was associated at the time of alleged recovery, which is a clear violation of the mandatory provisions of Section 103, Cr.P.C. He submits that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C., and the continued detention of the Applicant serves no useful purpose. He further argues that the Applicant has clean antecedents, is a permanent resident of Karachi, and there is no likelihood of his absconding or tampering with the prosecution evidence. On these grounds, he prays for grant of bail.

4. Conversely, the learned Assistant Prosecutor General opposes the bail application, contending that the Applicant was apprehended red-handed with 10 kilograms of Gutka/Mawa, and the recovery was duly documented in accordance with law. He argues that such offences pose a serious threat to public health and granting bail in such cases would encourage habitual violators and undermine the enforcement of the prohibition law. He further submits that sufficient material is available on record to connect the Applicant with the commission of the alleged offence. Lastly, he prays for dismissal of the bail application.

5. I have heard the arguments advanced by the learned counsel for the Applicant and the learned Assistant Prosecutor General for the State, and have examined the material available on record with a tentative assessment, as permissible at this stage of bail. Despite the recovery allegedly taking place in a public locality, no private witness was joined. The prosecution relies entirely upon official witnesses who are both complainant and seizing party.

6. That Section 2(vii) of the Act defines “gutka” and “manpuri” as— “(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; and, (b) any substance prepared for human consumption posing a serious threat to public health and includes such substances as Government may by

notification declare to be such substances”. In the present case, the FIR and memo of recovery merely state that “injurious to health Gutka/Mawa” was recovered but are silent as to the exact composition of the alleged mixture or whether it contained the essential ingredients enumerated under clause (a) or (b) of Section 2(vii). At this tentative stage, it cannot be conclusively determined whether the seized material qualifies as “Gutka” or “Manpuri” as legally defined. This further adds doubt to the applicability of Section 8(1) of the Act to the facts of the case and only four sachets were sent to chemical examination.

7. That Section 8(1) of the Act prescribes imprisonment which may extend to three years—thus falling outside the prohibitory clause of Section 497(1) Cr.P.C. The settled principle as laid down in **Tariq Bashir v. The State (PLD 1995 SC 34)** and reiterated in **Muhammad Tanveer v. The State (PLD 2017 SC 733)** and **Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)** is that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal an exception, unless there exist exceptional circumstances such as likelihood of ascendance, tampering with evidence, or repetition of offence, none of which are apparent in the present case.

8. There is no evidence of the applicant being a habitual offender or likely to abscond. He has remained in custody since 16.07.2025 and undertakes to face trial. While the menace of Gutka and Manpuri is undoubtedly hazardous and socially condemnable, bail cannot be withheld on moral or societal considerations when legal infirmities and statutory doubts exist. From the tentative assessment, this Court finds that it remains unverified whether the recovered material falls within the statutory definition of “Gutka” or “Manpuri” under Section 2(vii) of the Act; and (d) the offence is non-prohibitory. The applicant has thus succeeded in making out a case for grant of post-arrest bail.

9. For the reasons delineated hereinabove, this bail application is allowed. The applicant/accused Rehmatullah son of Ramzan Pathan is admitted to post-arrest bail, subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the trial Court. The observations made herein are tentative in nature and confined solely to the purpose of this Order. They shall not prejudice or influence the learned trial Court while deciding the case on merits. These are the detailed reasons for the short order announced on 20.10.2025.

JUDGE