

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

Criminal Bail Application No.S-758 of 2025

Applicant : Asadullah son of Haji Abdul Rehman
through Mr. Sajjad Ali Gopang,
Advocate

Respondent : The State through Ms. Sana Memon,
Assistant Prosecutor General, Sindh
along with ASI-Muhammad Pinjal
Solangi of Police Station Qazi Ahmed

Date of Hearing : 16.09.2025

Date of Order : 16.09.2025

ORDER

Jan Ali Junejo, J.- Through this application filed under Section 498 Cr.P.C., the applicant/accused seeks pre-arrest bail in Crime No.100 of 2023 registered at Police Station Kotri under Section 8(i) of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019 (hereinafter "SPPMSSUGM Act"). Interim pre-arrest bail was granted to the applicant vide order dated 14.07.2025 passed by this Court, which now comes up for confirmation.

2. The case of the prosecution, as per the FIR lodged by ASI Ayaz Ali Abro, is that on 05.04.2023, a police party on patrolling duty apprehended the applicant from a Toyota Corolla car and allegedly recovered five sacks of 'Adab Gutka Mava' and five sacks of 'Safina Gutka'. A *mashimama* was prepared at the spot. The applicant allegedly disclosed that he had collected the contraband from one Hazrat Gul and was to deliver it to Sher Muhammad in Hyderabad, leading to the registration of the FIR.

3. Learned counsel for the applicant, Mr. Sajjad Ali Gopang, has fervently argued for the confirmation of bail. His primary contentions are that the applicant has been falsely implicated in a foisted recovery to show artificial police efficiency, highlighting that no independent witnesses were associated despite the alleged recovery occurring on a public road, thus violating the spirit of Section 103 Cr.P.C. and rendering the recovery suspect. He emphasizes that the offence is non-prohibitory, carrying a maximum punishment of three years, making the grant of bail a rule under the settled principles of law. To counter the grave allegation of absconson, learned counsel submits that the applicant's absence from the trial court

for approximately more than one year was not deliberate but a consequence of his wrongful detention by Karachi police during operations against Afghan refugees, after which he was released upon identification. He further asserts that the applicant, who was initially granted bail by the trial court on 13.04.2023, is a first-time offender with no criminal antecedents, is not a hardened criminal, and undertakes to fully cooperate with the trial proceedings. He concludes that the case involves aspects, particularly the questionable recovery proceedings, that warrant “further inquiry” under Section 497(2) Cr.P.C., thus entitling the applicant to bail.

4. Conversely, learned Assistant Prosecutor General, Ms. Sana Memon, has vehemently opposed the confirmation of bail. She contends that the applicant does not approach this Court with clean hands, having been declared a proclaimed offender by the learned trial court vide order dated 26.02.2024 after he consistently absconded for a substantial period of more than one year subsequent to being released on bail. She argues that this prolonged and unexplained absconsion demonstrates a blatant disregard for the judicial process and a tendency to evade the law. She submits that the applicant's explanation for his absence—detention by Karachi police—is unsubstantiated, vague, and an afterthought, conspicuously omitted from the initial bail application before the Sessions Court, which led to its dismissal. The learned A.P.G. maintains that the prosecution has a *prima facie* case supported by the recovery *mashimama*, and that granting bail to an accused who has willfully remained a fugitive would set a dangerous precedent, undermining the authority of the courts and encouraging accused persons to abscond without consequence. Lastly, the learned A.P.G. prayed for dismissal of bail.

5. I have heard learned counsel for the parties at length and examined the case record, the impugned order of the learned trial Court, and the available material with a tentative assessment, as permissible at the bail stage. The alleged offence, carrying a maximum punishment of three years, does not fall within the prohibitory clause of Section 497(1), Cr.P.C. The consistent jurisprudence of the superior Courts holds that in such cases, the grant of bail is the rule, and denial the exception. The burden to demonstrate exceptional circumstances justifying pre-trial incarceration rests squarely upon the prosecution, which, in the present case, has not been discharged. Reliance is placed on the dictum laid down by the Honourable Supreme Court of Pakistan in Case of **Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)**, wherein it was held that: “The principle that bail

should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court". The contention regarding violation of Section 103, Cr.P.C. carries weight. The recovery, allegedly effected from a public place without associating independent witnesses, and relying solely upon police witnesses, casts doubt on the veracity of the proceedings. At the bail stage, this Court is not required to render a conclusive finding; however, even a tentative view of the record reveals sufficient grounds to invoke the principle of "further inquiry" within the meaning of Section 497(2), Cr.P.C., which provides a valid basis for the grant of bail. The applicant's previous absence and declaration as a proclaimed offender is indeed a serious matter. Nonetheless, the explanation furnished, namely detention, cannot be outrightly discarded at this stage. His voluntary appearance before this Court and submission to its jurisdiction reflect bona fide intent to face trial. It is a settled proposition of law that mere abscondence of an accused, though a relevant consideration, is not by itself sufficient to disentitle him from the concession of bail if otherwise on merits he has made out a case for such relief. The purpose of bail is not punitive but to ensure the accused's attendance at trial, and if the material available on record does not justify his further incarceration, the fact of abscondence alone cannot override the fundamental principles governing bail. The superior Courts have consistently held that while abscondence may reflect upon the conduct of the accused, it cannot be treated as conclusive against him so as to deprive him of his liberty, particularly when the allegations are otherwise doubtful or the case falls within the ambit of further inquiry. Reliance is placed on the case of **Mazhar Ali v. The State and another (2025 SCMR 318)**, wherein the Honourable Supreme Court of Pakistan was pleased to observe that: *"It is by now well settled that mere abscondence of an accused by itself is no ground to refuse bail to him if otherwise he is entitled to the said relief on merits"*.

6. The applicant has already enjoyed interim bail without its misuse, and no material is available to suggest that he is a previous convict, a hardened criminal. The ends of justice can adequately be served by imposing appropriate conditions to secure his attendance at trial. In view of the foregoing i.e. the non-prohibitory nature of the alleged offence, the prima facie existence of grounds for "further inquiry," the plausible explanation for his absence, and the absence of any evidence portraying him as a threat to society, this Court is of the considered tentative opinion that the applicant has made out a case for confirmation of bail.

7. For the foregoing reasons, the interim pre-arrest bail granted to the applicant, Asadullah son of Haji Abdul Rehman, vide order dated 14.07.2025, is hereby confirmed on the same terms and conditions. It is clarified that the observations made herein are tentative and prima facie in nature, confined exclusively to the decision of this bail application, and shall not prejudice or influence the learned Trial Court in the final adjudication of the case on merits. These are the detailed reasons of the short order announced on 16.09.2025. The office is directed to transmit a copy of this order to the learned Trial Court for information and necessary compliance.

JUDGE