

# THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Bail Application No.1608 of 2020**

Date	Order with Signature(s) of Judge(s)
Applicant	: <u>Adeel Baloch son of Abdullah Baloch, through Mr. Haad A.M. Pagganwala, Advocate.</u>
Respondent	: <u>The State through Mr. Khadim Hussain, Kooharo, Additional Prosecutor General, Sindh along with SIP Ghulam Mustafa, P.S. Gharo.</u>
Date of hearing	: <u>02.11.2020</u>
Date of Order	: <u>02.11.2020</u>

### **ORDER**

**Abdul Maalik Gaddi, J.** Having remained unsuccessful in obtaining his release on bail from trial Court in Crime No.143 of 2020, registered at police station Gharo, under Section 3, 4, 5, and 8 of Sindh Prohibition of preparation, Manufacturing, Sale/Use Gutka, Manpuri Act, 2019. Now the applicant Adeel Baloch son of Abdullah Baloch is seeking his release on bail in aforesaid crime through instant bail application.

2. The brief facts of the prosecution case are that on 02.10.2020 complainant SIP Ghulam Mustafa Attar of police station Gharo along with his subordinate staff namely HC Muhammad Ibrahim, PC Shah Muhammad and DPC Umer Bux duly armed and uniformed left police station for patrolling in police mobile under roznamcha entry No.173 hours. During patrolling from different places, when they reached at Aari Camp where they received spy information that one person in Shahzore vehicle bearing Registration No.KP-1550 was coming towards Gharo from Karachi along with prohibited Gutka and choona suparies. After receiving such information, they came at Filter Charhi, National Highway road and started checking of the vehicle coming from Karachi side. It was 1830 hours when they saw the white colour Shahzore vechicle of above mentioned number in which one person were sitting as the complainant signaled him to stop on which he tried to run away but complainant with the help of his staff apprehended him. On inquiry, the apprehended accused disclosed his name as Adeel Baloch son of Abdullah Baloch resident of Gali No.5, Sector 5, Sector Line, Islam Road, Lyari, Karachi. Complainant

checked the said Shahzore vehicle and found white kattas/sacks of choona suparies and one black colour plastic shopper in which 10 khattas/sacks of chooro suparies and 100 puries /wrappers of mava ghutka. The weighted of recovered kattas/sacks of chooro suparies became 20 kg per katta/sack and 10 kattas/sacks became 200 kg. During personal search, nothing was recovered from his possession. On demand of documents of vehicle he failed to produce the same. Out of 10 khattas/sacks, the complainant took 2 khattas/sacks weighing 20 kg and out of 100 puries/wrappers also took 50 puries/gutka and sealed it for chemical examination. Due to non-availability of private mashirs, complainant prepared mashirnama of arrest, search and recovery in presence of HC Muhammad Ibrahim and PC Shah Muhammad. Thereafter, accused along with case property were brought at police station where aforesaid FIR was lodged.

3. Mr. Haad A.M. Paganwala, learned Counsel for the applicant/accused has contended that applicant/accused is innocent and has been falsely implicated in this case by the complainant due to ulterior motives; that prosecution did not associate any private or independent witness to act as mashir of arrest and recovery although the place of incident was populated area which was clear violation of Section 103 Cr.P.C.; that the applicant is driver and carried out the gutka/mawa towards Gharo from Karachi and the same was not illegal and unlawful thing but the prosecution made the fake story and put the sections "Mainpuri Act, 2019" on the accused; that the alleged recovery has been foisted upon the applicant as there was no cogent evidence available on record to establish that the alleged mava/gutka has been recovered from the possession of the applicant; hence, prayed that this bail application may be allowed.

4. Conversely, Mr. Khadim Hussain Kooharo, learned Additional Prosecutor General, Sindh has vehemently opposed this bail application on the ground that applicant/accused has been arrested from the place of incident and recovery of hazardous material has been effected from him in presence of mashirs who have no inimical terms with him.

5. I have heard the learned Counsel for the parties at considerable length and have also examined the police file, so made available before me.

6. After careful consideration of contentions of learned Counsel for the parties, alleged huge quantity of gutka/mawa were recovered and as per chemical report, only 20 kilograms were send to the experts out of total 200 kilograms. No private witness has been cited as witness from the place of incident despite of spy information, though as per police papers, place of incident was populated area, hence the complainant party least could have made an attempt to associate private mashirs either from the place of information or from the place of incident. There is also some delay in sending the representative part for chemical examination which (delay) would also be required an explanation by prosecution, hence case in hand requires further probe.

7. It is noted that in this matter Complainant SIP Ghulam Mustafa Attar of police station Gharo lodged the FIR, but as per police paper he himself has also investigated the matter. Since in this matter complainant also acted as investigating officer, although the evidence of complainant/ police official, who also becomes I.O. is admissible in evidence but for the safe administration of justice, their evidence is also required to be minutely scrutinized at the time of trial, as the same is not corroborated by any independent evidence.

8. It is also noted that whole case of the prosecution is based upon the evidence of police officials, therefore, no question does arise for tampering the same at the hands of applicant. Since whole case of the prosecution is based upon the evidence of police officials, no doubt the evidence of police officials is as good as private persons, but when whole case is based upon evidence of police officials, therefore, their evidence are required to be minutely scrutinized at the time of trial, whether the alleged incident has taken place in a fashion as stated in FIR or otherwise. It is also noted that case has been challaned. Present applicant/ accused is no more required for investigation.

9. On perusal of record it further appears that in this matter Sections 3, 4, 5, 6, 8 of Sindh Prohibition, preparation, Manufacturing, Sale/Use of Gutka, Manpuri Act, 2019 are eitherailable or their punishments also do not fall within the prohibitory clause of Section 497 Cr.P.C. However, alleged hazardous/ poisonous

substance recovered from the possession of applicant was not administered to anybody at the hands of applicant. In this backdrop at this stage, it cannot be said that the applicant is responsible for causing hurt through administration of poisonous material to anybody.

10. Applicant has been in continuous custody since his arrest and is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstance which could justify keeping the applicant behind the bars for an indefinite period. Moreover, prosecution has not claimed that the applicant is previously involved in same nature of cases. Nothing on record that applicant is previously convicted in any case. Therefore, keeping in view the peculiar facts of instant case as well as minimum punishment, which normally may be considered while dealing with the bail plea, therefore, I am of the view that scale tilts in favour of the applicant for grant of bail. In this regard, I am supported with the case of ***Shehmoro vs. The State*** reported in **SBLR 2007 Sindh 249**.

11. Keeping in view the above given facts and circumstances, prima facie, applicant has succeeded to bring his case within the purview of subsection (2) of section 497, CrPC., for this reason, applicant is admitted to post arrest bail subject to furnishing his solvent surety in the sum of Rs.500,000/- (Rupees Five Lac only) and PR bond in the like amount to the satisfaction of trial Court.

12. Needless to mention here that any observation if made in this order is tentative in nature and shall not effect the merits of the case. It is made clear that in case if during proceedings the applicant/accused misuses the bail, then trial Court would be competent to cancel the bail of the applicant without making any reference to this Court.

JUDGE

*Faizan A. Rathore/PA\**