



bogus case against the applicant without assigning any cogent reason; that the offence under Section 269/270/273, PPC are bailable in nature except 337-J, PPC which is not attracted as alleged beetle-nut was its original condition without any chemical and hazardous material which cannot create any offence; hence, prayed that this bail application may be allowed.

4. Conversely, Mr. Khadim Hussain Koocharo, 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 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 Beetle-Nut were recovered and as per chemical report, only 5 kilogram were send to the experts out of total 50 kilograms. No private witness has been cited as witness from the place of incident 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 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.

8. On perusal of record it further appears that in this matter Sections 269, 270, 273 of PPC and 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 are either bailable or their punishments also do not fall within the prohibitory clause of Section 497 Cr.P.C. However, as far as the applicability of Section 337-J of PPC in the case in hand is concerned, though the same is not bailable, 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.

9. 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 ***Shehoro vs. The State*** reported in **SBLR 2007 Sindh 249**.

10. 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.200,000/- (Rupees Two Lac only) and PR bond in the like amount to the satisfaction of trial Court.

11. 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.