

The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019.

(Amendment Up To Date)
(Act No. Xxvii of 2023)

Amendment up to date

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**PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 30TH JANUARY, 2020**

NO.PAS/LEGIS-B-21/2019-The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Bill, 2019 having been passed by the Provincial Assembly of Sindh on 18th December, 2019 and assented to by the Governor of Sindh on 22nd January, 2020 is hereby published as an Act of the Legislature of Sindh.

**THE SINDH PROHIBITION OF PREPARATION,
MANUFACTURING, STORAGE, SALE AND USE OF GUTKA
AND MANPURI ACT, 2019**

SINDH ACT NO. III OF 2020

AN ACT

provide for the prohibition of preparation. manufacturing, storage, sale and use of Gutka and Manpuri in the Sindh.

Preamble:- WHEREAS it is expedient in the public interest to provide for prohibition of preparation, manufacturing, storage, sale and use of Gutka and Manpuri in the Province of Sindh, and to provide for matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

PARE- PRELIMINARY

1. Short title and Commencement. (1) This Act may be called the Sindh Prohibition of Preparation. Shorts and Manufacturing, Storage, Sale and use of Gutka and Manpuri Act, 2019.

(2) It shall extend to the whole of the Province of Sindh

(3) I shall come into force of once.

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context-

- (i) "addict" means a person physically or mentally dependent on gutka and manpuri or its derivative substances or a person who habitually uses gutka and manpuri or its derivative substances;
- (ii) "assets" means any property owned, controlled or belonging to an accused, whether directly or indirectly, or in the name of his or her spouse or relatives or associates whether within or outside Pakistan for which they cannot reasonably account;
- (iii) "associate" in relation to an accused, means:-
 - (a) any individual who is or has at the relevant time been ordinarily residing in the residential premises, including out-house and servant- quarters of an accused;
 - (b) any individual who is or has of the relevant time been managing the affairs of keeping the accounts of an accused;
 - (c) any individual who is or has been of the relevant time a member;
 - (d) partner or director or any association of persons or body of individuals;
 - (e) a trustee of any trust created by an accused.

(iv) "Authorized Officer" means a person authorized under section 18;

(v) "Court" means the Court of ¹[Judicial Magistrate of First Class;]

¹ The word "Sessions" "Subs by "Judicial Magistrate of First Class" vide S.2 of The Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri (Amendment) Act, 2021. (Act No. XXVII of 2023).

(vi) **"derivative"** means any mixture under any name viz panparag, gutka or such other mixture which is prepared or obtained by any series of operations from the ingredients as given in cause-(vii)

(vii) **"gutka" and "manpuri" means-**

(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 within the meaning of section 5 of the Sindh Pure Food Ordinance, 1960 and is also in contravention to the provisions of rule 11 of the Sindh Pure Food Rules, 1965;

(b) any substance prepared for human consumption and is posing a serious threat to the health of people and includes such substances as Government may, by notification in the official Gazette, declare to be such substances;

(x) **"manufacture"** means in relation to gutka and manpuri or its derivative products include -

(a) all processed by which such substances or its derivatives may be obtained;

(b) making or preparing such substances

(x) **"property" means-**

(a) all forms of property, whether moveable or Immovable, real estate or personal property of every description;

(b) property used to commit or to abet the commission of an offence punishable under this Act;

(c) all kinds of shares or interests in any corporate body, company, firm business concern society or fund, and

(d) all documents of title to land goods or property, wherever situated, money or valuable security issued by Government;

(xi) "**relative**" in relation to an accused, means the spouse and/or any lineal descendant of the accused and includes any other person holding property for or on his behalf;

(xii) "**rules**" means the rules made under this Act

PART-II PROHIBITION AND PUNISHMENT

3. Prohibition of preparation or manufacture of Gutka and Manpuri. No person shall produce, prepare or manufacture any mixture or substance as defined in clause (vi) and (vii) of section 2.

4. Prohibition of sale of Manpuri gutka and its derivatives. No person shall possess, offer for sale, distribute or deliver on any terms whatsoever, any substance as defined in clause (vi) and (vii) of section 2.

5. Prohibition of Import, export or transport of Manpuri gutka and its derivatives. No person shall import, export or transport and dispatch any substance as defined in clause (vi) and (vii) of section 2.

6. Prohibition on owning, operating premises or machinery for manufacture of manpuri, gutka or its derivatives. No person shall own, manage, operate or control any premises, place, equipment or machinery for the purpose of manufacture or production of gutka, manpuri and its derivatives.

7. Prohibition of acquisition and possession of assets derived from manpuri gutka and its derivatives.

No person shall knowingly-

(a) possess, acquire, convert assign or transfer any asset which has been derived, generated or obtained directly or indirectly, other in his

own name or in the name of his associates, relatives or any other person, through preparation and manufacture of derivative of

- (b) hold or possess on behalf of any other person any assets referred to in clause(a) and
- (c) conceal or disguise the true nature, source, location disposition, movement, file or ownership of such assets by making false declaration in relation thereto.

8. Punishment for contravention of sections 3.4.5.6 and 7. (1) Whoever contravenes the provisions of sections 3.4.3.4 and 7 shall be punishable with imprisonment which may extend to three years but shall not be less than one year and shall also be liable to fine which shall not be less than two lakh (we hundred thousand) rupees.

(2) in case of default of payment of fine under sub-section (1), the occurred shall undergo an additional imprisonment extending to six months and in case of subsequent offence shall be punished with imprisonment for a term which may extend to ten years but shall not be less than five years and fine which shall not be less than five lacs (live hundred thousand rupees).

9. Purchase and use of gutka or manpuri. No person shall purchase or use gutka, manpuri and its derivative of any place, in transport, at public places, in the use of gutka or offices, in educational institutes or in the hospitals, as may be prescribed

10. Punishment for purchase and use of gutka. Whoever contravenes the provisions of section 9 shall be punishable with Imprisonment which may extend to one month but shall not be less than seven days or fine which shall not be less than five thousand rupees.

11. Obstructions to officers. (1) Whoever hinders or obstructs any officer in discharge of his duties under this Act or wilfully furnishes to such officer any information which is false shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to two lac rupees but it shall not be less than one lac rupees.

(2) in case of default of payment of fine under sub-section (1), the accused shall undergo on additional imprisonment which shall extend to four months

12. Offences. The offences under the Act, shall be cognizable, non bailable and not compoundable except section 9 of this Act which shall be non-cognizable, bailable and compoundable.

13. Forfeiture of assets of an offender. Notwithstanding anything contained in above sections, where the Court finds a person guilty of an offence punishable Under sections-3.4.5.6 and 7 Act and sentences him to imprisonment for a term exceeding three years, the Court shall also order that his assets derived from preparation, manufacturing and trafficking substances as defined in clause (vi) and (vii) of section 2. shall stand forfeited to Government unless the Court is satisfied that the said assets or any part thereof has not been acquired by commission of above said acts constituting offences under this Act, the burden of proof whereof shall lie on the accused prove the same.

(1) If the property ordered to be forfeited is Immovable, the forfeiting shall in the case of land paying revenue, be made through the Collector of the District in which the property is situated in all other cases

- (i) by taking possession; or
- (ii) by appointment of receiver; or
- (iii) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or
- (v) by all or any such method or the Court may deem fit

PART III SEARCH AND INVESTIGATION

14. Power of entry search, seizure and arrest without warrant. (1) Where an officer, not below the rank of Sub-Inspector of Police or equivalent authorized in this behalf by Home Department, believes on a credible information received to him and arrest or a reasonable complaint has been made or a reasonable without warrant suspicion or apprehension exists of his having been so concerned, that any substance as defined in clause (vi) and (vii) of section 2. in respect of which an offence punishable under this Act has been committed, is kept or concealed in any

building. place, premises or conveyance, he may, without an order of warrant of search from a Magistrate against such person and without affording him an opportunity for the concealment of evidence or escape, such officer may-

- (a) enter into any such building place, premises or conveyance.

Provided, that before entering any house prior permission of the SSP of the concerned district shall be taken.

- (b) break open doors and windows for his liberation remove any other obstacle to such entry in case of resistance;
- (c) seize such substances and other materials used in the manufacture, sale and purchase thereof and any other article which he has reason to believe to be liable to confiscation and any document or other article which he has reason to believe may furnish evidence of commission of an offence punishable under this Act; and
- (d) detain and arrest the person whom he has reason to believe to have committed an offence punishable under this Act.

(2) Before or immediately after taking any action under sub section the officer shall record grounds and basis of the information and proposed action and forthwith send a copy thereof to his immediate superior officer.

15. Power to seizure and arrest in public places. An officer authorized under section 14 shall-

- (a) seize, in any public place or in transit any substance as defined in clause (vi) and (vii) in respect of which he has reason to believe that an offence punishable under Act has been committed, alongwith such substances or any other article liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence, of the commission of an offence punishable under this Act; and
- (b) detain any search any person whom he has reason to believe to have committed an offence punishable under this Act and if such person

has any substance as defined in clause (vi) and (vii) of section 2 in his possession and such possession appears to him to be unlawful, arrest him.

Explanation: For the purpose of this section, the expression "public place" includes any public conveyance, hotel, shop or any other place intended for use by, or, accessible to the public.

16. Power to stop and search conveyance. An officer referred to in section 14 may if he has reason to suspect that any conveyance is, or is about to be used for the transport of any substance as defined in clause (vi) and (vii) of section 2 in respect of which he suspects that any provision of this Act has been, or is being or is about to be contravened of any time, stop such conveyance and-

- (a) search the conveyance or part thereof;
- (b) examine and search any goods on or in the conveyance or
- (c) if it becomes necessary to stop the conveyance, he may use all reasonable force for stopping it.

17. Punishment for vexatious entry, search, seizure or arrest. Any person empowered under sections 14, 15 and 16 who

- (a) without reasonable grounds of suspicion, enters or search, seizure or searches or causes to be entered or searched, any arrest building place, premises or conveyance;
- (b) vexatiously and unnecessarily seizes the property of any person on the presence of searching for any substance as defined in clause (vi) and (vii) of section 2 or any other article or documents relating to any offence under this Act; and.
- (c) vexatiously and unnecessarily detains searches or any person, shall be punished with imprisonment for a may extend to **three years** and to fine which may extend to three lac rupees.

2[17-A Trial of cases. All cases pending in the Court of Sessions, immediately before the commencement of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri (Amendment) Act, 2021, shall stand transferred to the Court of Judicial Magistrate who shall try and proceed further in the cases received to it except in exceptional cases where the transferee court has ordered for is ordered for de novo proceedings in such cases.]

18. Authorized Officer. Home Department may by notification in the official Gazzete, authorize one or more persons to act as an Authorized Officer under this Act.

19. Power to make rules. Government may make rules for carrying out purposes of this Act.

20. Indemnity. No suit, prosecution or other legal proceedings shall le against Government, any Member of the Police force or any other person exercising any of the powers or performing any duties under this Act or rules made thereunder for anything which is done or intended to be done in good faith, under this Act.

21. Applicability of Code. The provisions of the Code of Criminal Procedure, 1898 shall apply mutatis mutandis to the proceedings under this Act.

22. Over-riding effect. Notwithstanding anything contained in any other law, for the time being in force, the provisions of this Act and rules made thereunder shall have over-riding effect.

Case Laws

2023 YLRN 14 KARACHI- ABDUL QAHIR VS State
S. 497---Penal Code (XLV of 1860), Ss. 269, 270 & 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of poison---Bail,

² S.17-A Inserted by of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri (Amendment) Act, 2021. (Act No. XXVII of 2023),Ref;S.3

grant of--Further inquiry--Non-availability of Chemical Examiner's report-- Non-association of independent witnesses--Effect--Accused was alleged to have been found in possession of 15750 packets of gutka--Gutka was sent to the Chemical Examiner after a delay of about 3 days--Chemical Examiner's report was still awaited--Police had failed to examine any person who was allegedly found purchasing gutka from the accused and/or the accused was administering the same to him and that any such complaint was ever made by any person from society to show that the accused was involved in such an injurious case, which was the basic ingredient of S.337-J, P.P.C.--Alleged hazardous material was not recovered from the exclusive possession of the accused--Place of incident was stated to be a busy road but no private person was associated to witness the recovery proceedings--Application of S. 337-J, P.P.C., was yet to be established by the prosecution after recording of evidence--Case against accused required further inquiry within the meaning of subsection (2) of S. 497,Cr.P.C., in circumstances--Bail was allowed, in circumstances.

2023 PCrLJN 50 KARACHI
MOHSIN alias MULLAN VS State

Ss. 269, 270 & 337-J--Criminal Procedure Code (V of 1898), S. 103--Qanun-e-Shahadat (10 of 1984), Art. 129(g)--Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of poison; search to be made in presence of witnesses; withholding best evidence--Appreciation of evidence--Complainant acting as Investigating Officer--Effect--Contradictory statements--Non-examination of sample-bearer the item--Scope--Accused was convicted for having been found in possession of gutka--Place of arrest was a thickly populated area and was surrounded by shops and houses but despite that fact the complainant failed to take services of an independent person of the locality to witness the event--Statements of witnesses were contradictory to each other on material particulars of the case--Sample-bearer was not examined--Complainant himself had investigated the case--Although, no specific bar existed against the complainant who was also Investigating Officer of the case but being the complainant, it could not be expected that an Investigating Officer would collect any material which went against the prosecution or give any benefit to the accused--Nothing was available on record to show that the hazardous or poisonous substance was

administered to anybody at the hands of accused---Appeal was allowed and impugned judgment was set aside.

2022 PCrLJ 143 KARACHI
MUHAMMAD EIDAN VS State

S. 497(2)---Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of gutka and Manpuri Act, 2019 (III of 2020), Ss. 4 & 8---Penal Code (XLV of 1860), Ss. 269, 270 & 273---Possession of gutka---Bail, grant of---Further inquiry---Record reflected that alleged recovery was effected from a populated area but no private person was associate as witness in the proceedings nor the complainant tried---All the witnesses were police officials, therefore, there was no apprehension of tempering the evidence---Investigation of case was complete and the challan had been filed before the court having jurisdiction, therefore, the custody of accused was not required for further investigation---Sections 269, 270 & 273, P.P.C. were bailable and for the violation of S. 4 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of gutka and Manpuri Act, 2019, punishment of up to 03 years but not less than 01 year was provided---Even taking into account the maximum punishment of 3 years, said provision did not fall within the prohibitory clause of S. 497, Cr.P.C.---Accused having made out a case for further inquiry into his guilt, was granted bail in circumstances.

2022 MLD 1420 Karachi
KARACHIMUHAMMAD ALI ABRO VS State

Ss.269, 270 & 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of a poison---Appreciation of evidence---Benefit of doubt---Delay in sending the recovered material for chemical analysis---Effect---Prosecution case was that 35-packets of gutka Supari in two sacks were recovered from the vehicle driven by accused---Use of said material malignantly spread the infection of diseases dangerous to life as it contained intoxicants/unwholesome drugs---Record showed that the parcel of material was sent to the Chemical Examiner after three days for which no plausible explanation was furnished by the prosecution---Person who brought the property to the Chemical Examiner was also not examined by the prosecution to explain as to where the property was kept for three days---Said fact alone was sufficient to disbelieve the recovery---Report of Chemical Examiner showed that 02 packets of gutka were received at the laboratory, whereas

Road Certificate showed that both the sacks containing 35 packets each were sent for chemical examination--Road Certificate, did not mention about the two packets which were separated, one from each sack, at the time of recovery for chemical examination and were sealed separately--Case of prosecution became doubtful--Appeal against conviction was allowed, in circumstances.

**2022 MLD 1420 KARACHI
MUHAMMAD ALI ABRO VS State**

Ss.269, 270 & 337-J--Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of a poison--Appreciation of evidence--Benefit of doubt--Prosecution case was that 35-packets of gutka Supari in two sacks were recovered from the vehicle driven by accused--Use of recovered material malignantly spread the infection of diseases dangerous to life as it contained intoxicants/unwholesome drugs--All the witnesses were on same line that police recovered two sacks containing 35 packets in each and they separated one packet from each sack for chemical examination and sealed the remaining packets in same sacks--Police also sealed both the two packets which were separated from each sack for chemical examination--Evidence of all the said witnesses showed that only 34 packets were sealed in each sack--Mashirnama of arrest and recovery so also FIR disclosed the same facts about the recovery and sealing--Record revealed that the sacks were de-sealed on the request of the DPP for the state before the Trial Court and were found 35 packets of gutka in each sack--Chemical Examiner's report also showed that two packets were received at Laboratory for the test--Evidence of complainant when considered with the chemical examiner's report, it created very serious doubt about the recovery of alleged gutka--If those packets which were sent for chemical examination were included in the property brought before the court and was de-sealed it become 36 packets in each sack which was not the case of the prosecution--Circumstances established that the prosecution had failed to prove its case against the accused beyond shadow of doubt--Appeal against conviction was allowed, in circumstances.

**2022 YLRN 209 KAR
Haji MALOOK VS State**

S. 497--Penal Code (XLV of 1860), Ss. 269, 270 & 337-J--Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of a poison--Bail, grant of--Further inquiry--Recovery of 215 Puries (Packets) of gutka--No private person had been associated as mashirs, in spite of prior spy information received during patrolling--Delay in sending the representative part for chemical examination also required an explanation by prosecution, hence making a room for further probe--No question would arise for tampering the evidence at the hands of accused as case of prosecution was based upon the evidence of police officials--No doubt the evidence of police officials was as good as private persons, but when whole case was based upon evidence of police officials, their evidence was required to be minutely scrutinized at the time of trial as to whether the alleged incident had taken place in a manner as stated in FIR or otherwise--Case had been challaned, accused was no more required for investigation--Application for grant of bail to accused was allowed, in circumstances.

2022 YLRN 191 KARACHI
NAEEMUDDIN VS State

S. 497--Penal Code (XLV of 1860), Ss. 269, 270, 272, 273 & 337-J--Possession and transport of gutka--Bail, refusal of--Accused/ applicant was found involved in transporting gutka weighing 157.500 kilograms in car--Accused/applicant pleaded innocence and that the offence with which he had been charged did not fall within the prohibitory clause of S.497, Cr.P.C.--Huge quantity of gutka, valuing lac of Rupees, could not be foisted upon the applicant particularly, when no animosity or ill-will against the police was alleged by him--Prosecution witnesses had supported the version of the complainant in their statements under S. 161, Cr.P.C.--Expert report of Government Analyst was also positive--Sufficient material was available with the prosecution to connect the applicant with the heinous crime--Bail could not be claimed in the cases of like nature, involving huge quantity of such a dangerous item, namely gutka, which was more dangerous than narcotics--Offence under S. 337-J, P.P.C., carrying punishment up to ten years did fall within the prohibitory clause of S.497, Cr.P.C.--Applicant had failed to make out his case for grant of bail--Bail application was dismissed, accordingly.

2022 YLRN 111 KARACHI
MUHAMMAD SHAHZAD VS State

S. 497--Penal Code (XLV of 1860), Ss. 269, 273, 337-J & 34--Negligent act likely to spread infection of disease dangerous to life, sale of noxious food or drink, causing hurt by mean of a poison, common intention ---Bail, grant of--Further inquiry---Alleged recovery of 27 puries of Rajni and 05 puries of one-to-one---No private witness had been associated by the complainant party in spite of prior spy information received during patrolling---Delay in sending the representative part for chemical examination also required an explanation---Whole case of the prosecution being based upon the evidence of police officials, no possibility of tampering the same at the hands of accused persons existed---No doubt the evidence of police officials was as good as private persons, but when whole case was based upon evidence of police officials, their evidence was required to be minutely scrutinized at the time of trial whether the alleged incident had taken place in the manner as stated in FIR or otherwise---Sections 269 & 273, P.P.C. were bailable but S.337-J, P.P.C. was not bailable, however, alleged hazardous/poisonous substance was not administered to anybody at hands of the accused persons---No complaint of local people was on record to show that accused persons were selling hazardous material and to whom the material was sold---Accused persons had been in continuous custody since their arrest and were no more required for any purpose of investigation nor the prosecution had claimed any exceptional circumstance, which could justify keeping them behind the bars for an indefinite period---Accused persons were previously not involved in same nature of cases---No word of gutka/Mawa allegedly sold by accused persons appeared in FIR---Keeping in view the peculiar facts of the case as well as minimum punishment, which might normally be considered while dealing with bail plea, justice demanded grant of bail to accused.

2022 YLRN 79 KARACHI
SHABIR VS State

S. 497--Penal Code (XLV of 1860), Ss. 269 & 337-J,---Negligent act likely to spread infection of disease dangerous to life, causing hurt by mean of a poison---Bail, grant of--Further inquiry---Recovery of 15000 Mainpuris as well as 10500 Safina gutka---Huge quantity of Mainpuri and gutka was shown to have been recovered from possession of accused---Plea of alibi by accused--Affidavits sworn in by the inhabitants of the area in whose presence accused was alleged to have been arrested was to be agitated upon before Trial Court at the time of trial---Section 337-J, P.P.C., was yet to be established; particularly when not a single person claimed to be purchaser or victim had

been examined--Enmity against police officer showed malice on part of prosecution, which was sufficient to hold the case of accused as one of further inquiry as envisaged under S.497(2), Cr.P.C.--Bail application was allowed, in circumstances.

2022 PCrLJN 118 KARACHI

ABDUL AZIZ VS State

S. 497--Penal Code (XLV of 1860), Ss. 269, 272 & 337-J--Negligent act likely to spread infection of disease dangerous to life, adulteration of food or drink intended for sale, causing hurt by means of a poison--Bail, grant of--Further inquiry--Recovery of alleged 230 packets/puries of gutka/Mawa--No private witness had been associated by the complainant despite the fact that the alleged place was situated in populated area and it was day time--Whole case of the prosecution was based upon the evidence of police officials, therefore, no question did arise for tampering the same at the hands of accused--No doubt the evidence of police officials was as good as private persons, but their evidence was required to be minutely scrutinized at the time of trial, whether the alleged incident had taken place in the manner as stated in FIR or otherwise--Sections 269 & 272, P.P.C. were bailable but S. 337-J, P.P.C. was not bailable, however, alleged hazardous/ poisonous substance was not administered to anybody at hands of the accused--Nothing was on record that the accused was selling gutka/Mawa as no evidence of any purchaser was on record--Accused had been in continuous custody since his arrest and was no more required for purpose of investigation nor the prosecution had claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period--Accused was not previously involved in same nature of cases--Held, keeping in view the peculiar facts of the case as well as minimum punishment, which might normally be considered while dealing with bail plea, scale tilted in favour of grant of bail--Accused was admitted to bail, in circumstances.

2022 PCrLJN 75 KARACHI

MUHAMMAD MURAD VS State

S. 498--Penal Code (XLV of 1860), Ss. 269, 273 & 337-J--Negligent act likely to spread infection of disease dangerous to life, sale of noxious food or drink, causing hurt by means of a poison--Ad interim pre-arrest bail, recalling of--Scope--Accused was alleged to have been found in possession of 5000 puries

of gutka--Held; such huge quantity of gutka, could not be foisted upon the accused, more particularly in view of the fact that no mala fide or ill-will against the police was prima facie established by the accused--Prosecution witnesses in their statements recorded under S. 161, Cr.P.C., had supported the version of the complainant--Offence under S. 337-J, P.P.C., carried punishment upto 10 years, as such it fell within the prohibitory clause of S. 497, Cr.P.C.--Sufficient material was available with the prosecution to connect the accused with such heinous crime against the society--Accused had failed to make out his case for grant of pre-arrest bail--Application for grant of pre-arrest bail was dismissed, in circumstances.

**2022 PCrLJN 37 KARACHI\
ASIF ALI VS State**

S. 497-- Penal Code (XLV of 1860), Ss. 269, 270, 272, 273 & 337-J-- Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, adulteration of food or drink intended for sale, sale of noxious food or drink and causing hurt by means of a poison--Bail, grant of--150 packets of Panparag, 321 packets of Panparag gutka lying on the table were taken into possession by the police-- Accused disclosed that he was selling Panprang gutka at his shop--No consumer had been shown to have purchased the said intoxicant material-- High Court observed that item so recovered being easily available in the market could be foisted upon an innocent person by the police--Not only the report submitted by Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of Chemical Examiner had also not been established by the prosecution--All the prosecution witnesses were police officials and no private person had been cited as Mashirs, though the place of incident was a thickly populated area--Nothing was available on record to show that accused was ever involved in similar case in the past---Investigation in the case was complete therefore, accused was no longer required to police for further investigation--Accused was granted bail, in circumstances.

**2022 PCrLJN 6 KARACHI
CHANESSAR KHAN GHANGHRO VS State**

S. 498-A--Penal Code (XLV of 1860), Ss. 269, 270, 272, 273 & 337-J-- Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, adulteration of food

or drink intended for sale, sale of noxious food or drink and causing hurt by means of a poison---Pre-arrest bail, confirmation of---Accused was allegedly apprehended by the police for openly selling gutka/Supari, dangerous and hazardous to public health---Case for the grant of bail had been made out by the accused, as it was yet to be determined at the time of trial whether the alleged material was recovered from the accused or not or it had been foisted upon him by the Police---Prosecution had failed to point out that any poisonous thing or poison was given to any other person which could be injurious to human body---Offence did not fall within the prohibitory clause of S. 497, Cr.P.C.---Record further revealed that both the mashirs were police officials and no private person had been cited as mashir---Accused was regularly attending the High Court as well as Trial Court and there was no allegation of misusing the concession of bail against him---No useful purpose would be met in diverting back the accused to Trial Court for seeking post arrest bail---Accused had made out a case for grant of bail---Application was allowed and interim pre-arrest bail already granted to accused was confirmed, in circumstances.

**2021 PCrLJ 1036 KARACHI
SAJEEL VS State**

S. 498---Penal Code (XLV of 1860), Ss. 269, 270 & 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of poison---Pre-arrest bail, confirmation of---Recovery of 315 sachets (purries) of gutka---Only 6 sachets (purries) of Safina gutka weighing about 12 grams, out of 630 grams, were sent to Chemical Analyzer which could easily be foisted upon any person---Such sachets, sent for expert opinion, could not be the representative samples for the remaining sachets, as every sachet was a separate small closed bag, containing small amount of substance---Investigation stood completed and the accused was regularly attending the Trial Court---Bail application of the accused was allowed and his interim pre-arrest bail was confirmed, in circumstances.

**2021 PCrLJ 901 KARACHI
NAZIR AHMED VS State**

S. 497(2)---Penal Code (XLV of 1860), Ss. 269, 270 & 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of poison-

--Bail, refusal of--Petitioners were arrested on recovery of 19 sacks of different kinds of gutka, weighing 240 kilograms, while transporting the same in the car, which was in their control and possession--Such a huge quantity of gutka valuing more than Rs. 1300000/-, could not be foisted upon the petitioners, more particularly, in view of the fact that no animosity or ill will against the police was alleged by them--Prosecution witnesses had supported the version of the complainant in their statements under S. 161, Cr.P.C.--Report of Government Analyst was positive--Sufficient material was available with the prosecution to connect the accused persons with crime--Bail could not be claimed as a matter of right in the cases like the present one involving huge quantity of such a dangerous item, which was more dangerous than narcotics--Offence under S. 337-J, P.P.C., carrying punishment up to ten (10) years did fall within the prohibitory clause of S. 497, Cr.P.C.--Petitioners had failed to make out their case for grant of concession of bail--Bail was refused, accordingly.

2021 PCrLJ 509 KARACHI
RAHIM VS State

S. 497--Penal Code (XLV of 1860), Ss. 269, 270 & 337-J--Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of a poison--Bail, grant of--Further inquiry--Recovery of 98 Puries (packets) of Mawa/gutka--No private witness had been associated in spite of prior spy information received during patrolling and that the alleged shop from where the accused was arrested along with alleged Mawa/gutka was situated in a populated area--Delay in sending the representative part for chemical examination which (delay) would also be required an explanation by prosecution--Whole case of the prosecution was based upon the evidence of police officials, therefore, no question arose for tampering the same at the hands of accused--Case had been challaned--Accused was no more required for investigation--Sections 269 & 270, P.P.C. were bailable and the punishment also did not fall within the prohibitory clause of S. 497, Cr.P.C.--Alleged hazardous/poisonous substance recovered from the possession of accused was not administered to anybody at the hands of accused, it could not be said that the accused was responsible for causing hurt through administration of poisonous material to anybody--Nothing was available on record to show that accused was selling the gutka/Mawa, as no evidence for any purchaser existed--No purchaser was arrested at the time of incident and

no purchase money had also been recovered--Accused had been in continuous custody since his arrest and was no more required for any purpose of investigation nor the prosecution had claimed any exceptional circumstance which could justify keeping the accused behind the bars for an indefinite period--Prosecution had not claimed that the accused was previously involved in same nature of cases--Nothing on record that accused was previously convicted in any case--Prima facie, accused had succeeded to bring his case within the purview of subsection (2) of S. 497, Cr.P.C.--Accused was admitted to bail, in circumstances.

**2020 YLR 1354 KARACHI
FAHEEM AHMED VS State**

S. 497--Penal Code (XLV of 1860), Ss. 269, 270 & 337-J--Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of a poison--Bail, grant of--Further inquiry--Recovery of 9000 grams Panparag and gutka--No person from the public or society made any complaint against the accused nor any person was produced to whom the accused allegedly administered the alleged Panparag or gutka--Not a single person was found nearby to him while purchasing the same from the accused--Basic ingredients for application of section 337-J, P.P.C, were lacking in the case--Mere heinousness of offence was no ground for withholding the concession of bail to accused--Law could not be stretched upon in favour of the prosecution, particularly at bail stage, as every accused was presumed to be blue eyed boy of the law until and unless he was found guilty of the charge--Case against the accused required further enquiry within the meaning of subsection (2) to S.497, Cr.P.C.---Bail application was allowed, in circumstances.

**2020 PCrLJ 984 KARACHI
MUHAMMAD AYOUB VS State**

S. 498--Penal Code (XLV of 1860), Ss. 269, 272, 273 & 337-J--Negligent act likely to spread infection of disease dangerous to life, adulteration of food or drink intended for sale, sale for noxious food or drink, causing hurt by means of poison--Pre-arrest bail, confirmation of--Further inquiry--Recovery of 18 bags containing 900 packets of gutka/betel nuts injurious to health--Complainant on spy information arrested the accused persons and recovered the alleged gutka from the car--Police had ample time to arrange the private persons to associate as witnesses in the recovery proceedings but failed--

Applicability of S. 337-J, P.P.C. was yet to be determined by the Trial Court after recording the evidence of the prosecution witnesses---Section 337-J, P.P.C. provided punishment for a term which might extend to ten years--- Word "may" provided discretion to the court in punishing the accused found guilty after complete trial---Keeping in view the above punishment provided in S. 337-J, P.P.C. the offence as alleged against the accused persons did not fall within the ambit of S. 497(1), Cr.P.C.---While deciding the bail application the lesser punishment provided in the law was to be considered---Accused persons were arrested by the police and later on they were granted bail by Judicial Magistrate and on furnishing surety they were released---Record did not reflect that such order of the Magistrate was challenged by the prosecution by filing cancellation application and there was no evidence that the custody of accused persons was required to the investigation officer after their release--Only the accused persons who on insertion of S. 337-J, P.P.C. in the challan felt an apprehension of their arrest and approached the Court of Sessions Judge for bail before arrest which was declined---Trial of the case was nearing to conclusion as in the cases of recovery only complainant, mashir and investigation officer was required to be examined---Declining pre-arrest bail and sending accused to the jail, in circumstances, was not justifiable---While deciding bail plea, the material was to be assessed tentatively, deeper appreciation of evidence was not permissible under the law---Interim pre-arrest bail already granted to the accused persons was confirmed, in circumstances.

2020 MLD 1473 KARACHI
ASGHAR ALI RAJPUT VS State

Ss. 498 & 103---Penal Code (XLV of 1860), Ss. 337-J, 269, 272---Causing hurt by means of a poison, negligent act likely to spread infection of disease dangerous to life, adulteration of food or drink intended for sale---Pre-arrest bail, confirmation of---Further inquiry---Recovery of two packets of Z-21 gutka---Record reflected that complainant on spy information arrested the accused and recovered the alleged gutka from the cabin alleged to be owned by him---Police had ample time to arrange private persons to associate them as witnesses in the recovery proceedings as there was no apprehension of escape of the accused, complainant, however, failed to do so which made the recovery doubtful---Prosecution also failed to establish presence of any customer during investigation to show that the accused was selling gutka---Applicability of S.337-J, P.P.C., was to be determined by the Trial Court after

recording evidence of prosecution witnesses---While deciding bail application lesser punishment provided in the law was to be considered---Section 337-J, P.P.C. provided the punishment for a term which might extend to ten years--Word "may" used in the provision provided discretion to the Court in punishing the accused found guilty after complete trial---Keeping in view the above punishment provided in S.337-J, P.P.C., the offence as alleged against the applicant did not fall within the ambit of S.497(1), Cr.P.C.--Grant of bail in such cases was rule and refusal was an exception---Interim pre-arrest bail already granted to the accused was confirmed, in circumstances.

**2020 MLD 847 KARACHI
AMEER ALAM VS State**

S. 497(2)---Penal Code (XLV of 1860), Ss. 269, 270 & 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infection of disease dangerous to life, causing hurt by means of poison--Bail, grant of---Further inquiry----Recovery of gutka weighing 1200 grams and Mawa 400 grams from accused--- Admittedly, as per FIR, incident occurred at bus stand where people were present but the prosecution failed to associate any person so approached to become witness of recovery and incident, violating S. 103, Cr.P.C.--Prosecution did not mention if accused was seller or acting on behalf of seller and/or purchaser of gutka---Recovered material being easily available in the market could be used for mala fide intention---Sections 269 & 270 were bailable, ingredients of S.337-J showed that the same were yet to be determined, which could only be done at trial after recording of evidence---Accused had made it a case of further inquiry--Accused was admitted to bail, in circumstances.

**2020 PCrLJN 107 KARACHI
ARSHAD MEHMOOD VS State**

S. 498---Penal Code (XLV of 1860), Ss. 269, 270, 273, 337-J---Negligent act likely to spread infection of disease dangerous to life, malignant act likely to spread infectious disease dangerous to life, sale of noxious food or drink, causing hurt by means of poison---Interim pre-arrest bail, confirmation of--Accused were found in possession of gutka/mainpuri, an injurious/poisonous substance, intending to spread infection/disease likely to be dangerous/poisonous to human lives---All the penal sections applied in case were bailable except one under S. 337-J, P.P.C., its applicability required determination at trial--Case had finally been challaned and there was no

apprehension of tampering with the evidence on the part of the accused as all the witnesses were police personnels---Case of grant of pre-arrest bail to the accused on point of further enquiry and mala fide having been made out, interim pre-arrest bail already granted to the accused, was confirmed, in circumstances.

**2019 CLC 1872 KARACHI
JALIL AHMED VS PROVINCE OF SINDH**

Ss.2(9)(i)(ii)(iii), 11, 12, 13, 14, 15 & 16---Adulterated food---Duties of authorities---Chaaliya Masala and gutka/Mainpuri etc.---Petitioners were aggrieved of actions done by authorities in a campaign against manufacturing/preparation and sale of gutka/Mainpuri etc---Validity---Tobacco Pan Masala was always included in food additives (S.2(9)(i)(ii)(iii) of Sindh Pure Food Ordinance, 1960) and it was offered for consumption by human, therefore, the same was required to be regulated by laws relating to safety and standard of all such things likely to offer or sell for human consumption---Independent status of betel-nut and chewing tobacco to be not falling within the meaning of "food" was not sufficient for a self-imagined license to sell a mixture thereof with food additives particularly when the same were found to be hazardous/injurious to health by allowing expansion of tobacco laws and limiting Food Laws---Court was not competent to limit or expand scope of a statute beyond its specified limitations because hardship of a few could not be the basis in determining validity of any statute---Law must be interpreted and applied on its plain language---High Court directed Local Government to ensure true enforcement of Ss. 11 and 15 of Sindh Pure Food Ordinance, 1961---High Court further directed Local Government to appoint required number of inspectors as per S.16(1) of Sindh Pure Food Ordinance, 1961 and establish laboratories specifically meant for analysis of foods---High Court also directed police to continue with campaign against manufacturing/preparation and sale of gutka/Mainpuri and similar items under any title---High Court directed Provincial Government to follow up process of proper enactment of permanent ban of gutka and Mainpuri or some product with any other title---Constitutional petition was dismissed in circumstances.

**2018 PTD 2324
CUSTOMS-APPELLATE-TRIBUNAL-LAHORE
MUHAMMAD ASLAM VS SPS, ASO, NMB WHARF, KARACHI**

Ss.2(s), 16, 17, 156 & 157--SRO No.499(I)/2009, dated 13-6-2009--Smuggling--Confiscation of seized goods along with the vehicle--Customs Anti-Smuggling Organization team, chased and intercepted vehicle containing foreign origin 'gutka', which was a restricted/ prohibited item--Vehicle was confiscated and no option was given to pay fine in lieu of confiscated vehicle to appellant who claimed to be owner of the vehicle--Driver of the vehicle disclosed that he ran the vehicle on hire basis and that recovered 'gutka' belonged to a lady, who hired the services of vehicle for its transportation--No document of whatsoever nature in respect of legal import or purchase of subject consignment was produced by the driver--Appellant/owner of the vehicle asserted that he had no concern with the subject "gutka"; whereas no one came forward to claim ownership of the seized "gutka"; which manifested that foreign origin "gutka" was smuggled/ non-duty paid--Additional Collector of Customs (Adjudication) vide order-in-original, held that charge of smuggling was established and directed outright confiscation of the seized goods along with vehicle--At the time of the seizure of offending goods from the vehicle, present at the time of seizure of goods and vehicle--Appellant/owner of the vehicle was not--No inquiry/investigation was made to ascertain clue of the alleged lady being owner of the offending goods--Appellant/owner of the vehicle and driver thereof, in no way could be held responsible without establishing guilty knowledge of the offence--For proving knowledge of owner not present in the vehicle would require inquiry, which was totally lacking in the case; even Investigating Officer could not register crime against the driver of the vehicle--Involvement of appellant in the act was not proved by the department--No indication existed that appellant was involved in smuggling of offending goods which were lying in the vehicle openly and were neither hidden in any false or secret cavity nor false cavity was noticed in the vehicle--Department, admitted that vehicle in question was never used before for transportation of smuggled goods--Vehicle was registered in the name of appellant and was being used on hiring basis for transportation of passengers and goods--Adjudicating authority, had passed impugned order merely on presumption without any cogent reasons; whereas the circumstances of the case were of the nature which could only lead a prudent mind to conclusion that the appellant/the owner of the vehicle had no connivance with the owner of offending goods or for that matter guilty knowledge of the fact--Impugned order-in-original was modified to the extent of outright confiscation of vehicle, having no history of previous use in smuggling of goods, with direction to release the same to its lawful owner

(appellant) on payment of 20% redemption fine of customs value of the subject vehicle---Order-in-original in respect of confiscation of foreign "gutka", was maintained as same did not suffer from any illegality or irregularity.

2011 PLC 193

NATIONAL-INDUSTRIAL-RELATIONS-COMMISSION

MUHAMMAD SALEEM IZHAR VS IFFCO PAKISTAN (PVT.) LIMITED

Industrial and Commercial Employment (Standing Orders) Ordinance 1968--S.O. 15 , Industrial Relations Act 2008--25 , Misconduct--TERM , S. 25(8)(g)--Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.O.15(3)(a)(b)--Unfair labour practice--Misconduct--Issuance of letter of inquiry to the employee--Employee who claimed to be elected Finance Secretary of Collective Bargaining Agent Union in the establishment, was issued show-cause notice and after about one year from issuance of said show-cause notice, a letter of inquiry was sent to the petitioner, validity of which had been challenged--Petitioner had alleged that said letter had been issued to him due to his trade union activities--Management vide circular had prohibited the staff from using Pan/gutka, Naswar and Chhalia etc.--Allegation against the petitioner was that he not only himself was using the said prohibited things, but also was supplying the same to others--Food material was being processed in the Factory in which the petitioner was working--Petitioner having disobeyed the order of the Management, service of show-cause notice on the charge would not amount to any act of unfair labour practice by the Management--Only wild and bald allegations had been alleged by the petitioner against the Management and no specific instance of unfair labour practice had been quoted--Petition was not maintainable.

2011 PLC 193

NATIONAL-INDUSTRIAL-RELATIONS-COMMISSION

MUHAMMAD SALEEM IZHAR VS IFFCO PAKISTAN (PVT.) LIMITED

Industrial Relations Act 2008--25 , Misconduct--TERM , West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968--S.O. 15 , S. 25(8)(g)--Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968), S.O.15(3)(a)(b)--Unfair labour practice--Misconduct--Issuance of letter of inquiry to the employee--Employee who claimed to be elected Finance Secretary of Collective Bargaining Agent Union in the establishment, was issued show-cause notice and after about one year

from issuance of said show-cause notice, a letter of inquiry was sent to the petitioner, validity of which had been challenged--Petitioner had alleged that said letter had been issued to him due to his trade union activities--Management vide circular had prohibited the staff from using Pan/gutka, Naswar and Chhalia etc.---Allegation against the, petitioner was that he not only himself was using the said prohibited things, but also was supplying the same to others--Food material was being processed in the Factory in which the petitioner was working--Petitioner having disobeyed the order of the Management, service of show-cause notice on the charge would not amount to any act of unfair labour practice by the Management--Only wild and bald allegations had been alleged by the petitioner against the Management and no specific instance of unfair labour practice had been quoted--Petition was not maintainable.

2003 YLR 893 KARACHI

MUHAMMAD SHAFI VS GOVERNMENT OF SINDH

Constitution of Pakistan 1973--199 ,
---S.144---Constitution of Pakistan (1973), Art.199---Constitutional petition--
Prohibitory order--District Magistrate had. Passed prohibitory order against petitioners who were manufacturers and suppliers of 'gutka' and 'Manpuri' and after expiry of period of two months from passing of said order, District Magistrate again passed identical order against the petitioners-- Prohibitory order under S.144(1) Cr. P. C. could be passed by District Magistrate only for a period of two months and if restriction was necessary to operate for a further period in cases of danger to human life, health, safety or there was likelihood of a riot, then only Provincial Government could pass order under S.144(6), Cr. P. C. but District Magistrate could not pass order of the same nature after expiry of two months' period from passing of .earlier order--
Order in competently passed by District Magistrate, was declared by High Court to be without lawful authority and of no legal effect.

2003 YLR 893 KARACHI

MUHAMMAD SHAFI VS GOVERNMENT OF SINDH

Criminal Procedure Code (Cr.P.C) ---S.144---Constitution of Pakistan (1973), Art.199---Constitutional petition-- Prohibitory order--District

Magistrate had. Passed prohibitory order against petitioners who were manufacturers and suppliers of 'gutka' and 'Manpuri' and after expiry of period of two months from passing of said order, District Magistrate again passed identical order against the petitioners-- Prohibitory order under S.144(1) Cr. P. C. could be passed by District Magistrate only for a period of two months and if restriction was necessary to operate for a further period in cases of danger to human life, health, safety or there was likelihood of a riot, then only Provincial Government could pass order under S.144(6), Cr. P. C. but District Magistrate could not pass order of the same nature after expiry of two months' period from passing of .earlier order---Order in competently passed by District Magistrate, was declared by High Court to be without lawful authority and of no legal effect.