

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Application No.S-198 of 2025.

Noor Muhammad v. The State

Applicant : Noor Muhammad through Mr. Irfan Khaskheli,
Advocate.

Complainant : Mst. Mehnaz through Mr. Mukesh Kumar Oad,
Advocate.

Respondent : The State through Mr. Irfan Ali Talpur, D.P.G.

Date of hearing : 06.05.2025.

Date of Decision : 29.05.2025.

O R D E R

Miran Muhammad Shah, J:- Through instant Bail Application, the applicant/accused namely, Noor Muhammad s/o Badal Khan seeks post arrest bail in Crime No.299/2024, registered at Police Station Shahdadpur, Sanghar for an offence U/s 377-B, 511, 377A(i), L(ii)-PPC. Earlier bail plea of the applicant/accused was declined by the learned Additional Sessions Judge, Khipro vide order dated 24.01.2025.

2. The facts of the case are mentioned in the Bail Application and the copy of F.I.R. is also attached with the Bail Application, hence, needs not to reproduce the same here.

3. The learned counsel for the applicant/accused argued that the applicant/accused is innocent and has not committed an offence as alleged in the FIR, the allegations are false, fabricated & concocted; that there are no reasonable grounds to believe that the applicant/accused is guilty. Further argued that the applicant/accused has been involved in this case due to malafide intentions and ulterior motives as the story from its face is appearing to be manipulated one; that no alleged incident had occurred as alleged in the FIR; that the applicant/accused is a respectable and senior citizen being retired from Civil Aviation Authority aged about 60 years; that

the actual reason behind false involvement of applicant/accused in this case is civil dispute between applicant/accused and complainant party since 1999, for which a Civil Suit No.12 of 1999 was also filed, which clearly shows that actually this story is cooked just to harass the applicant/accused by involving him falsely in this heinous offence, however, applicant/accused is innocent and has no concern with the alleged offence; that after said Suit, earlier in 2013 one false FIR bearing crime No.139 of 2013 was also lodged at PS Sanghar due to her influence, in which applicant/accused party was awarded with punishment for conviction of 15 days, however, such conviction was set-aside by the learned Additional Sessions Judge, Shahdadpur in Cr. Appeal No.07 of 2017; that the complainant just to harass and drag applicant/accused party in false & frivolous litigations had also preferred an Acquittal Appeal No.S-102 of 2017 before this Court and same was dismissed; that the medico legal officer's report indicates no any evidence of offence or sign of any kind of violence on the body of victim; that the applicant/accused is old age person; that the ingredients of Section 377-B PPC are not attracted; that the story narrated in the FIR itself does not attract the ingredients of Section 377-B PPC as upon asking, victim disclosed that the applicant/accused was taking him away with the intention of sexual abuse that clearly shows that applicant/accused neither committed nor even attempted the alleged offence. Lastly he prayed that the applicant/accused is entitled for concession of bail as the case of applicant/accused is one of further inquiry. He submitted statement alongwith certain documents and relied upon case laws reported as 2021 MLD 527 & 2021 YLR 1777.

4. On the other hand, learned Deputy Prosecutor General & learned counsel for complainant vehemently opposed bail application of applicant/accused and argued that the applicant/accused has committed heinous offence which fall within prohibitory clause; that the applicant/accused is involved in an offence and he is not entitled for concession of bail; that the allegations of prosecution are corroborated by the medical evidence. They prayed for dismissal of the bail application. Learned counsel for complainant relied upon case laws reported as 2021 MLD 75, 2022 SCMR 50 & 2025 YLR 378.

5. Heard & perused.

6. Case of the applicant/accused is based purely on the alleged enmity which exists between the parties. Counsel for the applicant/accused has annexed one criminal litigation between two parties perhaps where the complainant's father is being shown to be involved and there is another Civil Suit mentioned although no documents for the said has been provided is also seems to be the allegedly bone of contention between the parties. The enmity in such cases is a doubled edged sword which can be taken either in favour of the applicant/accused or against him because since both the parties can be involved/misused for malafide reasons in the case. Here the case is of heinous nature and Honourable Superior Courts in number of times held that in cases, where the involvement of children is there to settle score for some other case is not to be considered as that does not apply to the prudent mind that a young child of yours could be used falsely for implication in a such heinous offence to deal with your opponent as retaliation. This case in hand is of 377-B PPC which is only an attempt for causing sodomy. The facts narrated in the FIR by the complainant also indicate that she did not allege any act of Sodomy taking place. It was only the grappling of the applicant/accused and the statement of the victim who realized the intention of applicant/accused and ran away forcibly, however, in his statement U/s 161 Cr.P.C he has very categorically implicated the present applicant/accused for attempting to commit Sodomy with him. Learned Prosecutor as well as the counsel for the complainant both have contended that the allegations of the case are corroborated by medical evidence as the Medico Legal Officer has also found injuries of hurt on the person of the victim which also provides an indicator that intention of use of force upon the victim. The case is of a heinous nature which is a menace for society at large. Even the attempt for Sodomy carries a punishment which is not less than 14 years and may be extended to 25 years, hence falls within the prohibitory clause. Learned counsel for the applicant/accused has placed his reliance on two cases one being of very high profile nature, whose facts are not attracted in this case, which is case of more of trial and involving Anti-Terrorism Act. The other case law relied upon by the learned counsel for applicant/accused of Honourable Supreme Court is though is identical, however, the same author who has another case law, has been submitted by the counsel for complainant is more identical to the case in hand, hence dismissing the Bail Application on similar grounds as agitated in the present bail application. Prosecution has relied on the case of 2022 SCMR

Page 50, which is exactly on the case which is being applied in the case in hand. For brevity of the case, the relevant quotes of the case law are reproduced as under;

“(a) Penal Code (XLV of 1860)---

---Ss. 377-B & 354---Sexually abusing a child---Reappraisal of evidence---Accused was investigated at length and was found involved as per accusation levelled in the crime report---Whole prosecution case qua ocular account hinged upon the testimonies of the victim and her mother i.e. the complainant---While making her statement in Court, the victim had narrated the whole occurrence in a very mature and natural manner touching the contents of the crime report on all aspects without any disconnection---Although the victim was of tender age, however, her statement depicted maturity of the highest level, which was in consonance with the statement of the other witness, who happened to be her mother---Victim has directly charged the accused for sexually abusing her while detailing the acts committed by him on the day of occurrence; she had further alleged that the accused was in the habit of sexually abusing her even earlier to the present incident---As far as the identity of the accused was concerned, there was not an iota of doubt about his identity because he being the neighbor of the victim was conversant with her---No previous enmity existed between the parties, which could lead to false implication of the accused in the present case---Mere non-availability of any sign of injury on the victim in the medical evidence was of no help to the accused, as the prosecution case was that the accused undressed the victim and touched his genital organ on the victim's body---Petition for leave to appeal was dismissed, leave was refused and convictions and sentences recorded against the accused were upheld.

(b) Penal Code (XLV of 1860)---

---S. 377-B---Cases of sexual abuse---Solitary statement of victim---Such statement in isolation was sufficient for conviction if the same reflected that it was independent, unbiased and straight forward to establish the accusation against the accused.”

7. Prosecution also relies upon the case 2021 MLD 75, wherein also the same Sections are being applied for bail. Cases of such nature cannot be taken lightly and such allegations are a serious repercussions without getting much into the other controversies which might be related the statement of the victim and of the parent should not be implied as a tool to settle a score

among parties. These are a very difficult time for a family, when a child is being victimized sexually whether some boy or a girl. People who are accused of such offences cannot be dealt leniently specially at the bail stage, where only a tentative assessment need to be made, however at the trial stage when the evidence is led and other incriminating evidence might give results otherwise, however, at the bail stage such leniency cannot be taken. In support of my contentions, I also place my reliance on other case law provided by the prosecution i.e. 2019 YLR Note 39.

"6. I have considered the submissions of learned counsel for the parties and have gone through the material available on record. The allegations levelled against the applicants/accused are that they along with co-accused have committed sodomy with the son of complainant, who is aged about 17-years. During the course of investigation, statement of victim was recorded under section 161, Cr.P.C., in which he has fully implicated the present applicants/accused along with co-accused. The victim was also medically examined. It is settled principle of law that at the bail stage only tentative assessment is to be made. Perusal of record emanates that names of applicants/accused transpired in the FIR with specific role. The statement of victim is also supported by the medical evidence, that he has received injuries on the different parts of the body. It is well settled principle of law that statement of victim alone in a rape case would be sufficient to connect the accused with the commission of the offence if the statement of victim inspires confidence. No material has been placed on record from which it could be deduced that the case is outcome of enmity. The delay in lodging of FIR has properly been explained by the complainant. Even otherwise, delay per se in lodging of FIR is no ground for grant of bail as each and every case is to be decided on its own peculiar facts and circumstances. It seems that applicants/accused are involved in the heinous offence of moral turpitude and the case of the applicants/ accused securely falls within the prohibitory clause of section 497, Cr.P.C.

7. Furthermore, it is settled proposition of law that concession of pre-arrest bail is always extended in the case of mala fide and ulterior motives on the part of complainant/prosecution to save innocent people from their unjustified arrest and humiliation at the hands of police, but learned counsel for applicant Aftab Ahmed has failed to bring on record any material to believe that he has falsely been involved due to malice or ulterior motives of the complainant or he has not committed the alleged offence."

8. I also place my reliance upon un-reported order passed by this Court in Cr. Bail Application No.S-1335 of 2024. The relevant portion of the said order is reproduced as under;

*"...In this regard, reliance is placed on the case of Aman Ullah v. The State reported as P L D 2009 Supreme Court 542, wherein it was observed that such like reports of the so-called experts were only corroborative in nature and were required only when the ocular testimony was of a doubtful character. No doubt Section 376 PPC might not be applicable ipso facto, however, then definitely an attempt for such offence U/s 377 PPC and the Section of 511 is available to show its attempt. However, the provisional medical certificate produced by the counsel for complainant shows that the Hymen was not intact, so every probability of an attempt exists and that benefit to be given to the victims because victims might be under stress and going through psychological trauma. The statements recorded by Investigation Officer U/s 161 Cr.P.C have fully supported the prosecution case. A child molestation is a menace in today's society which has to be dealt very diligently, and persons involved in such offences cannot be let lose unless some sort of strong evidence brought on record. Perhaps an attempt was made which young girls were unable to disclose it or realize it. Furthermore, the delay in lodgment of FIR is now considered norm in these kinds of cases. There is no question of afterthought, since enmity has not been established or pleaded by the applicant/accused side. Thus, taking tentative assessment of the available record, the applicant/accused is prima facie connected with the commission of alleged offence, which is not only heinous in nature but is also an affront to the collective morality and norms of the society and attracts the prohibitory clause of Section 497 Cr.P.C. The case laws relied by the learned counsel for the applicant/accused are distinguishable and not applicable to the case in hand. In the light of above observations and case law mentioned, I am not inclined to allow bail and maintain the orders of learned trial court by **rejecting** the bail application in hand."*

9. In such circumstances, while placing my reliance on the above case laws and the facts as well as medical record brought before this Court, I am of the opinion that the applicant/accused has not made out a case for bail, hence his Bail Application is **rejected**.

JUDGE