

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT HYDERABAD

Criminal Bail Application No.S-951 of 2025

Applicant : Sadam son of Sain Bux Jamali,
through Mr. Jamil Ahmed Khanzada,
Advocate

Complainant/ State : Ghulam Nabi son of Rab Dino Bhatti
through Ms. Sana Memon, Assistant
Prosecutor General, Sindh along with
ASI-Ghulam Rasool Jamali of Police
Station Sakrand

Date of hearing : 02.10.2025

Date of Order : 02.10.2025

ORDER

Jan Ali Junejo, J.- This criminal bail application has been filed under Section 497 of the Code of Criminal Procedure, 1898 ("Cr.P.C.") by the applicant/accused, Saddam S/o. Sain Bux Jamali, seeking post-arrest bail in the aforementioned crime.

2. The genesis of the case is FIR No. 254/2022, registered on 16.12.2022 at Police Station Sakrand, on the complaint of Ghulam Nabi Bhatti. The prosecution alleges that the complainant's 15-year-old son, Abbas Ali, was lured away by the co-accused and, along with the present applicant, was subjected to a gang rape (sodomy) near the Bypass Sakrand.

3. Initially, the FIR was lodged under Section 377 PPC. The applicant was granted pre-arrest bail by the learned Additional Sessions Judge-VI, Sakrand, on 09.01.2023. After investigation, the police submitted a charge-sheet, substituting/ adding Section 375-A PPC. The learned trial court framed charges against the applicant and co-accused under Section 375-A PPC on 23.10.2023.

4. Crucially, on 29.07.2025, the learned trial court took the applicant and his co-accused into custody as they had failed to seek fresh bail for the graver offence under Section 375-A PPC, for which they were never formally admitted to bail. The applicant's subsequent post-arrest bail application was dismissed by the learned 3rd Additional Sessions Judge,

Shaheed Benazirabad, vide order dated 08.08.2025, leading to the instant application before this Court.

5. Learned Counsel for the Applicant, fervently argued that there are no reasonable grounds to believe that the applicant is guilty of the alleged offence, as he is innocent and has been falsely implicated due to enmity and mala fide intent. He contends that the DNA report and the Final Medico-Legal Certificate clearly establish that the biological evidence connects only the co-accused, namely Mujahid Jamali and Asad Mughal, thereby exonerating the present applicant. He further argues that there exists a material conflict between the ocular account and the medical evidence, rendering the case one of "further inquiry" within the meaning of Section 497(2), Cr.P.C. He submits that the delay of about four hours in lodging the FIR suggests deliberation and false implication, while the absence of independent witnesses from the locality further weakens the prosecution's case. He maintains that the applicant has regularly attended the trial proceedings after the grant of pre-arrest bail and has never misused the concession of liberty. He also emphasizes that the absence of marks of violence on the victim's body creates doubt regarding the prosecution's version, and concludes that bail is a rule and jail an exception, as pre-trial detention should not be used as a form of punishment. Lastly, he prayed for grant of bail.

6. Conversely, learned Assistant Prosecutor General, vehemently opposed the grant of bail, contending that the applicant stands charged with the heinous offence of gang rape of a minor under Section 375-A, PPC, which carries the punishment of death or imprisonment for life; therefore, the bar under Section 497(1), Cr.P.C., squarely applies. She argues that the prosecution has established a strong prima facie case, supported by direct ocular evidence of the victim and eyewitnesses, including the complainant and others, who arrived at the scene and caught the accused in the act. She submits that the role attributed to the applicant is specific and active, as he, along with a co-accused, restrained the victim while the third co-accused committed the offence, and subsequently all participated in the act, demonstrating a common intention. She maintains that although the DNA report does not directly implicate the applicant, it also does not exonerate him, as the absence of his DNA does not negate his participation or facilitation in the commission of the crime as part of a group. She further contends that the applicant's failure to seek fresh bail for the graver charge under Section 375-A, PPC, for nearly two years reflects disregard for the legal process, and that, given the severity of punishment, there exists a grave apprehension of abscondence if he is

released. She concludes that the “No Objection” affidavit of the complainant is irrelevant in a non-compoundable offence of this nature and cannot override the statutory bar or the larger interests of justice. Lastly, the learned A.P.G. prayed for dismissal of bail.

7. After anxious consideration of the arguments advanced, the case record, and the settled principles of law governing bail, this Court finds that the applicant is charged under Section 375-A PPC, which prescribes the punishment of death or imprisonment for life. Section 497(1) Cr.P.C. creates a statutory prohibition against the grant of bail where there are reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life. The initial onus is on the prosecution to show such reasonable grounds exist. In the present case, the direct and specific allegations in the FIR, corroborated by the immediate identification of the accused and the medical evidence confirming sodomy, amply establish prima facie reasonable grounds of guilt. The embargo of Section 497(1) Cr.P.C. is, therefore, triggered. The applicant's primary reliance is on the “further inquiry” clause under Section 497(2) Cr.P.C. This clause is invoked only in exceptional circumstances where the evidence is so manifestly unreliable, contradictory, or deficient that no reasonable person could form a belief in the accused's guilt. The mere existence of a contradiction or a defence is not sufficient. The contention that the DNA report exonerates the applicant is a misapprehension. The DNA evidence pertains to the presence of seminal fluid. The prosecution's case is not solely dependent on this scientific evidence. The direct testimony of the victim and the eyewitnesses, who specifically name the applicant and ascribe to him the role of catching hold of the victim and participating in the gang rape, constitutes powerful prima facie evidence. The absence of the applicant's DNA does not obliterate this direct ocular account. At the bail stage, the court is not to weigh evidence like a trial; it is to see if credible evidence exists. Here, it undoubtedly does. The absence of external injuries on a 15-year-old victim does not, by any medical or legal standard, negate the possibility of a sexual assault, particularly one of this nature. This ground is devoid of merit. A delay of four hours, in the context of a traumatic incident involving a minor, during which the family was consulting and arranging conveyance to approach the police, is not unexplained or fatal to the prosecution's case. The applicant enjoyed pre-arrest bail for the less serious offence under Section 377 PPC. Once the charge was framed under the graver, capital offence of Section 375-A PPC, it was his legal obligation to seek a fresh bail. His failure to do so for a significant period, leading to his eventual custody, reflects adversely on his bona fides and awareness of

the strength of the case against him. The offence alleged is not only heinous but one that shocks the collective conscience of society. It involves the gang rape of a child. The law takes a particularly stern view of such crimes. The severity of the prescribed punishment itself gives rise to a strong incentive for the accused to evade justice. This Court finds substantial force in the prosecution's apprehension that the applicant, if released, may abscond. The affidavit of no objection filed by the complainant is legally irrelevant in a case of this nature. Offences under Sections 375-A and 377 PPC are crimes against the state and society at large. They are not compoundable. The will of an individual complainant cannot dictate the course of justice or override the statutory provisions and the public interest in prosecuting such serious crimes. In Case of **Abdul Wahab v. The State (2022 P.Cr.L.J. Note 105)**, it was held by this Court that: *"Even otherwise, merely filing affidavit of no objection, the applicant has not become automatically entitled for grant of bail. In my tentative opinion, affidavit submitted by complainant is of no consequence during bail stage and could not be given status of evidence, as the affidavit submitted by complainant is not statement either under section 161 or 164, Cr.P.C. In this connection, I am supported with case of Mst. Bashiran Bibi v. Nisar Ahmed and others reported in PLD 1990 SC page 83"*.

8. In view of the foregoing discussion, this Court is satisfied that:

- a) *There are reasonable grounds to believe that the applicant/accused is guilty of an offence punishable with death or imprisonment for life under Section 375-A PPC.*
- b) *The case does not fall within the exceptional category of "further inquiry" under Section 497(2) Cr.P.C.*
- c) *The gravity of the offence, the strength of the prima facie case, and the risk of the applicant absconding are compelling reasons for his continued detention.*

Consequently, the criminal bail application is devoid of merit and is hereby dismissed. The applicant shall remain confined in custody and be produced before the trial court on each date of hearing. It is clarified that any observations made herein are tentative and for the limited purpose of deciding this bail application. They shall not, in any manner, influence the learned trial court during the final adjudication of the case on its merits. These are the detailed reasons for the short order announced on 02.10.2025.

JUDGE