

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
HYDERABAD**

Criminal Bail Application No.S-864 of 2025

Applicants : Ghulam Murtaza and Aijaz Gul sons of Kirar through Mr. Muhammad Nawaz Panjotha, Advocate

Complainant : Mst. Shumaila wife of Waqar Ali Khashkheli through Mr. Mudassir Hussain Wahocho, Advocate

The State : Through Mr. Ghulam Murtaza Mallah, Assistant Prosecutor General, Sindh

Date of Hearing : 28.08.2025

Date of Order : 28.08.2025

ORDER

Jan Ali Junejo, J.- Through the instant application under Section 498, Cr.P.C., the applicants, namely (1) Ghulam Murtaza S/o. Kirar and (2) Aijaz Gul S/o. Kirar, seek pre-arrest bail in FIR No. 100/2025 registered at Police Station Matiari under Sections 376, 452, 511, 506/2, and 34, PPC. Earlier, the applicants had approached the learned Sessions Court by filing Bail Application No. 537/2025, which was transferred to the Court of the learned Additional Sessions Judge, Matiari, and was dismissed vide order dated 31.07.2025. Aggrieved thereby, the applicants have approached this Court seeking pre-arrest bail, where ad-interim bail was granted to them vide order dated 06.08.2025.

2. The brief facts of the prosecution case, as set out in the FIR, are that on 28.06.2025 at about 8:30 a.m. complainant Mst. Shumaila W/o. Waqar Ali alleged that applicant Ghulam Murtaza entered her house, restrained her and attempted to commit rape, but on her hue and cry her husband reached and saved her. It is further alleged that applicant Aijaz Gul, armed with a pistol, issued threats of dire consequences. The FIR was lodged on 16.07.2025. The applicants, having been unsuccessful before the learned Additional Sessions Judge have approached this Court.

3. Learned counsel contended that the FIR suffers from unexplained and inordinate delay of 18 days, which prima facie casts doubt on the veracity of the allegations. It is further argued that the alleged incident does not disclose ingredients of Section 376 PPC, as no rape or attempt thereof, in terms of tearing of clothes, use of force, or injuries, has been

shown. It is contended that the role assigned to co-applicant Aijaz Gul is exaggerated and appears to be an afterthought. It is further contended that the parties are closely related and there exists admitted enmity due to prior disputes over garbage throwing; therefore, false implication cannot be ruled out. It is argued that the case, at the most, requires further inquiry within the meaning of Section 497(2) Cr.P.C. Lastly, the learned counsel prayed for confirmation of interim bail granted by this Court.

4. Per contra, the learned Assistant Prosecutor General candidly conceded that the complainant, Mst. Shumaila, has raised no objection to the confirmation of bail in favour of the applicant.

5. I have carefully considered the submissions of learned counsel for the Applicants and the learned Assistant Prosecutor General for the State and undertaken a tentative appraisal of the material available on record, as permissible at the bail stage. Perusal of record shows that it is admitted that the alleged occurrence took place on 28.06.2025, whereas the FIR was lodged on 16.07.2025, i.e., after about 18 days of the incident. No plausible explanation has been furnished by the complainant for such inordinate delay. The unexplained delay in setting the law into motion not only casts serious doubt upon the veracity of the prosecution's case but also constitutes a substantial ground for bail, as the possibility of deliberation, consultation, and false implication cannot be ruled out. In the present matter, such unexplained delay prima facie indicates that the prosecution story was formulated after due deliberation, thereby diminishing the evidentiary value of the FIR at the bail stage, in light of the dictum laid down by the Honourable Supreme Court of Pakistan in the case of **Abdul Rehman alias Muhammad Zeeshan v. The State and others (2023 SCMR 884)**, wherein it was observed that: *"The crime report was lodged after an inordinate delay of five days for which not even a single word has been put forward by the complainant. The delayed registration of FIR prima facie shows deliberations and consultation on the part of the complainant"*.

6. The complainant alleged that applicant Ghulam Murtaza attempted to commit zina-bil-jabr (rape) by pushing her, covering her mouth, and trying to commit the act. However, the narration itself is inconsistent with natural human conduct: if her mouth was closed, how could she raise hue and cry? Furthermore, no medical examination or supporting evidence has been placed on record to show injuries, resistance, or torn clothes, which usually accompany even an attempt to commit zina. The allegation, therefore, on its face, does not disclose the complete ingredients of Section 376 PPC. At best, the matter falls under attempt provisions

(Section 511 PPC), which reduces the severity of punishment and takes the case out of the rigours of the prohibitory clause. Reliance can be placed on **Shahnawaz @ Chulu v. State (2013 P.Cr.L.J 1782)** where bail was granted in similar circumstances.

7. According to the complainant, while applicant Ghulam Murtaza was inside the house allegedly attempting to commit zina, co-applicant Aijaz Gul entered armed with a pistol. If this version is taken as correct, then the natural conduct would have been that Aijaz Gul would have restrained or attacked the complainant's husband when he intervened, but the FIR is silent on such confrontation. These omissions raise serious doubts about the truthfulness of the allegation and render the prosecution story inherently doubtful. The Hon'ble Apex Court has consistently observed that where the story of the complainant appears to be unnatural or improbable, bail cannot be refused merely on the basis of accusation. It is admitted by both sides that the complainant and the applicants are close relatives and there has been prior hostility due to a dispute over garbage-throwing in the street. Applicants have also placed on record a prior complaint filed by them before DSP Complaint Cell against the complainant's side. The existence of prior enmity cannot be ignored at this stage, as it provides a strong motive for false implication. In bail matters, even the mere possibility of mala fides on the part of the complainant or the investigating agency is sufficient to justify the grant of bail. Reliance is placed upon the case of **Ch. Tanveer Khan v. Chairman, National Accountability Bureau and others (PLD 2002 SC 572)**, wherein the Honourable Supreme Court of Pakistan was pleased to observe that: *"Similarly in number of cases the accused persons have been released on bail on the ground of further inquiry but essentially depending upon the facts of each case. Therefore, to apply either of the principles the facts of each case have to be taken in no consideration. It is also one of the most important principle of administration of justice that the accused cannot be kept in custody as a punishment particularly when the Court is convinced that the material produced before it is not sufficient to involve him in the commission of the offence unless by conducting further probe incriminating evidence is collected and placed on record"*.

8. Except Section 376 PPC, all other offences i.e., Sections 452, 506/2, 511, 34 PPC do not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. The settled principle, as consistently reiterated by the Honourable Supreme Court of Pakistan, is that in cases not falling within the prohibitory clause, the grant of bail is to be treated as a rule, while refusal is an exception. This exception can only be invoked in the

presence of extraordinary circumstances such as a likelihood of abscondence, the possibility of tampering with prosecution evidence, or a reasonable apprehension of repetition of the offence. No such circumstances have been demonstrated or substantiated in the present case. The Honourable Supreme Court of Pakistan in case of ***Muhammad Amjad Naeem v. The State through Prosecutor General Punjab and another (2025 SCMR 1130)*** reaffirmed this principle by observing that: *“The principle that bail should be granted as a rule and withheld only in exceptional circumstances, particularly in cases involving non-bailable offences, not falling within the prohibitory clause of section 497(1) Cr.P.C., has been developed and applied in numerous judgments of this Court”*. Moreover, there is nothing on record to suggest that the applicant has any previous conviction or that he is a habitual offender. Likewise, no material has been presented to indicate that he is likely to abscond or misuse the concession of bail if granted at this stage. It is also a settled principle of law that mere registration of a case, without concrete evidence of flight risk or prior criminal conduct, is insufficient to deprive an accused of the benefit of bail, particularly when the alleged offence does not fall within the prohibitory clause. Even with respect to Section 376, the role of applicants does not reflect consummation or full-fledged attempt; hence, the case falls for further inquiry under Section 497(2) Cr.P.C.

9. At bail stage, this Court is not to conduct a detailed appreciation of evidence but only to make a tentative assessment. From such assessment, it appears that: The prosecution case suffers from inherent contradictions and improbabilities; The delay in FIR registration remains unexplained; Independent corroboration is lacking; The allegation of attempt to commit zina does not appear to be substantiated by surrounding circumstances. Therefore, the case of the prosecution is not free from doubt, and benefit of such doubt, even at bail stage, must go to the accused as per the settled law. It is also significant to note that pre-arrest bail is an extraordinary relief, to be extended only in cases where mala fide, ulterior motives, or the use of arrest as a tool for humiliation and disgrace, rather than for the purpose of genuine investigation, is established. In the present case, the continuous police raids on the applicants' residences immediately after the lodging of the FIR, coupled with the unexplained delay in its registration and the admitted background of enmity, provide sufficient indication of mala fide. The Honourable Supreme Court, in the case of ***Khalil Ahmed Soomro and others v. The State (PLD 2017 SC 730)***, reiterated that: *“Although for grant of pre-arrest bail one of the pre conditions is that the accused person has to show that his arrest is intended by the prosecution out of mala fide and for ulterior*

consideration. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide. In this case, it appears that net has been thrown wider and the injuries sustained by the victims except one or two, have been exaggerated and efforts have been made to show that the offences are falling within those provisions of law, punishable with five years or seven years' imprisonment. All those aspects if are combinedly taken, may constitute element of mala fide". The most significant aspect of the case is that the complainant, Mst. Shumaila W/o. Waqar Ali, has sworn an affidavit expressing no objection if the bail application of the applicant is granted. She has further stated that the FIR was lodged in a moment of anger arising out of family disputes and that no such incident actually occurred.

10. From a tentative assessment of the material available on record, it emerges that:

- 1. The prosecution's case is marred by inherent contradictions, improbabilities, and an unexplained delay;**
- 2. The allegation under Section 376, PPC lacks corroboration from credible medical or circumstantial evidence, thereby attracting the principle of further inquiry;**
- 3. The admitted enmity between the parties provides a strong basis for false implication;**
- 4. The complainant has expressed no objection to the grant of bail to the applicant;**
- 5. The remaining offences do not fall within the prohibitory clause of Section 497(1), Cr.P.C.; and**
- 6. The mala fides in seeking the arrest of the applicant are evident from the surrounding circumstances of the case.**

In view of the above, the applicants have succeeded in making out a case for confirmation of interim pre-arrest bail. Accordingly, the ad-interim bail earlier granted to the applicants vide Order dated 06-08-2025 is hereby confirmed on the same terms and conditions. The observations made hereinabove are purely tentative in nature, confined to the present bail proceedings, and shall not prejudice or affect the merits of the case at trial. These are the reasons of the Short Order dated: 28-08-2025.

JUDGE