

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
Criminal Bail Application No. S-189 & S-190 of 2025

Applicant:                     1.   Syed Asadullah Ali Shah s/o Khair Ali Shah  
                                      2.   Syed Fayaz Shah s/o Ghulam Mehdi Shah  
                                      3.   Bibi Hina Shah d/o Fayaz Hussain Shah  
                                      Through M/s Qurban Ali Malano and Ali Murtaza  
                                      Shah, Advocates

Complainant:                 Mst. Shabnam,  
                                      Through Mr. Bakhtiar Ahmed Advocate

The State:                    Through Mr. Muhammad Raza Katohar, learned  
                                      DPG

Date of hearing         :       04.08.2025

Date of order           :       13.08.2025

**O R D E R**

**KHALID HUSSAIN SHAHANI, J.** – Applicants named above seek post arrest bail through two bail applications, which are the outcome of the same case bearing crime No. 126 of 2023, registered at P.S. Ranipur, for offences under Sections 302, 370, 374, 328-A, 34, 506, 171, 311, 376(3), 377 PPC and Sections 3, 14 of the Sindh Prohibition of Employment of Children Act, 2017. The case, after submission of challan and transfer from the Anti-Terrorism Court in terms of Section 23-A of the ATA 1997, is pending trial before the learned Additional Sessions Judge IV Khairpur.

2.             The factual matrix of the prosecution's case, as articulated in the FIR, is that on August 16, 2023, the complainant, Mst. Shabnam Khatoon, reported the death of her minor daughter, Fatima alias Saya, aged nine years. The deceased was engaged as a domestic helper at the residence of applicant Syed Asadullah Ali Shah. The complainant alleged that her daughter had been subjected to physical abuse and maltreatment by Syed Asadullah Ali Shah and his wife, Bibi Hina Shah. On August 14, 2023, the complainant was informed of her daughter's demise. Upon reaching the scene, she observed multiple injuries on the deceased's body. The FIR was lodged after the complainant viewed CCTV footage of an incident that purportedly caused her daughter's death.

3. The applicants were charged under various provisions of the Pakistan Penal Code, including Section 302, and Sections 3 and 14 of the Sindh Prohibition of Employment of Children Act, 2017. Following the submission of the challan, the case was transferred from the Anti-Terrorism Court to the regular Sessions Court under Section 23-A of the Anti-Terrorism Act, 1997.

4. Learned counsel for the applicants submitted that the accused have been falsely roped in and that the prosecution case rests entirely upon circumstantial evidence, there being no direct ocular account of the alleged occurrence. It was urged that the implication of applicant Syed Fayaz Shah through a supplementary statement is nothing but an afterthought, manifestly engineered to falsely involve him. Attention was invited to the final post-mortem report, which records the cause of death as “cardiac arrest secondary to trauma” and categorically notes that there is “no evidence of sexual assault”. This medical finding, counsel contended, completely dislodges the basis for attracting Sections 376(3) and 377, PPC, thereby substantially weakening the prosecution’s edifice. Counsel further pointed out that the FIR was lodged after an unexplained delay of two days, a lapse which, in the absence of a cogent explanation, casts serious doubt on the veracity of the prosecution version and suggests deliberation, consultation, and embellishment. It was emphasized that several material prosecution witnesses, namely, Ujala, Sania, Naseem Ahmed, Muhammad Hassan, and Sagheer Ahmed, have already been examined before the learned trial court and have categorically resiled from the prosecution story, deposing instead that the applicants did not commit the murder and that the deceased’s death was natural. It was further submitted that the complainant, Mst. Shabnam Khatoon, and her husband, Nadeem Pharrero, have filed No-Objection Affidavits before the trial court, expressing no objection to the grant of bail to the applicants. While such affidavits may not by themselves absolve liability in respect of a non-compoundable offence, they nonetheless constitute a relevant and weighty circumstance for consideration at the bail stage. In view of these material contradictions, the retraction of star witnesses, and the absence of direct evidence, learned counsel contended that the case squarely falls within the ambit of “further inquiry” envisaged under Section 497(2), Cr.P.C. It was argued that in such circumstances, the continued incarceration of the applicants serves no legitimate prosecutorial purpose and amounts to pre-trial punishment, in direct derogation of the fundamental right to liberty guaranteed by Article 9

and the right to a fair trial under Article 10-A of the Constitution of the Islamic Republic of Pakistan.

5. Learned counsel for the complainant candidly conceded to the submissions advanced by learned counsel for the applicants and expressed no objection to the grant of bail in their favor. Notably, the mother of deceased is also present in court and voluntarily submits to admit the applicants on bail.

6. Learned Deputy Prosecutor General vehemently opposed the bail applications, contending that the alleged offence is of a heinous nature and squarely attracts the prohibitory clause embodied in Section 497(1), Cr.P.C. He submitted that, notwithstanding the absence of medical confirmation of sexual assault, the post-mortem findings nonetheless lend support to the allegation of violence by recording "trauma" as a contributing factor to death. It was further urged that the No-Objection Affidavits produced by the complainant hold no legal consequence in a prosecution for qatl under Section 302, PPC, as such offence is one against the State and not merely a matter of private compromise. However, reluctantly concedes that private prosecution witnesses have resiled from their ocular account and declared hostile by the prosecution during their testimony.

7. I have extended anxious consideration to the submissions advanced by learned counsel for the applicants, learned counsel for the complainant, and the learned Deputy Prosecutor General. I have also minutely examined the available record, including the FIR, the police report under Section 173 Cr.P.C., the post-mortem report, the depositions of the prosecution witnesses recorded thus far, and other annexures forming part of the case file.

8. At the bail stage, the Court is required to make only a tentative assessment of the material placed on record, without embarking upon a deeper appreciation of evidence or attempting to determine guilt or innocence. The well-settled principle, reiterated in *Manzoor and 4 others v. The State* (PLD 1972 SC 81), is that bail is not to be withheld as a mode of pre-trial punishment; rather, liberty is to be curtailed only when statutory and factual grounds compelling such restraint are clearly made out.

9. The FIR was lodged after a delay of two days from the date of the alleged occurrence, without satisfactory explanation on record. As held in *Ayub Masih v. The State* (PLD 2002 SC 1038), such delay “tarnishes the authenticity of the FIR” and provides room for deliberation, consultation, and potential fabrication of facts, thereby shaking the foundational credibility of the prosecution’s version. The post-mortem report, an objective, scientific piece of evidence, records the cause of death as “cardiac arrest secondary to trauma” and categorically rules out any evidence of sexual assault. This finding substantially undermines the applicability of Sections 376(3) and 377, PPC, and raises a serious question whether the nature of trauma was homicidal, accidental, or otherwise. Jurisprudence is settled that when medical evidence does not fully support the gravest charge, the matter falls within the domain of further inquiry under Section 497(2), Cr.P.C. Several material prosecution witnesses, namely Ujala, Sania, Naseem Ahmed, Muhammad Hassan, and Sagheer Ahmed, have been examined before the learned trial court and have categorically resiled from the prosecution’s story, instead stating that the deceased died a natural death and exonerating the applicants. This complete departure from the initial version gravely undermines the substratum of the prosecution case and, even at a tentative stage, creates reasonable doubt in terms of *Tariq Bashir v. The State* (PLD 1995 SC 34), where the Supreme Court held that the benefit of doubt, however slight, must be extended to the accused even at the bail stage. The prosecution case rests purely on circumstantial evidence, there being no direct eyewitness account of the alleged homicidal act. The supplementary statement implicating applicant Syed Fayaz Shah prima facie appears to be an afterthought. Where the chain of circumstantial evidence is incomplete or doubtful, the accused should not be deprived of liberty pending trial. The complainant Mst. Shabnam Khatoon and her husband Nadeem Pharrero, being legal heirs of the deceased, have filed No-Objection Affidavits expressing no objection to the grant of bail to the applicants. While such affidavits do not by themselves extinguish the State’s prosecutorial right in respect of a non-compoundable offence, they remain a relevant circumstance indicating the absence of subsisting hostility between the parties and diminishing apprehension of witness intimidation or evidence tampering. A substantial portion of the prosecution evidence has already been recorded, with principal witnesses examined and hostile to the prosecution case. The likelihood of the

applicants influencing the remaining formal or peripheral witnesses is minimal. The applicants have remained behind bars for a considerable period, yet the trial has not concluded. The right to a speedy trial is enshrined in Article 10-A of the Constitution. Articles 9 and 10-A of the Constitution guarantee the right to liberty and the presumption of innocence until proven guilty. In the face of material contradictions, medical evidence negating the gravest charge, and a hostile prosecution case, continued detention would be punitive in nature, which is impermissible at the pre-conviction stage. In the case of Zaighum Ashraf (2016 S CMR 18) Full Bench of Hon'ble Supreme Court held that: "To curtail the liberty of a person is a serious step in law, therefore, the Judges shall apply judicial mind with deep thought for reaching at a fair and proper conclusion albeit tentatively however, this exercise shall not to be carried out in vacuum or in a flimsy and casual manner as that will defeat the ends of justice because if the accused charged, is ultimately acquitted at the trial then no reparation or compensation can be awarded to him for the long incarceration, as the provisions of Criminal Procedure Code and the scheme of law on the subject do not provide for such arrangements to repair the loss, caused to an accused person, detaining him in Jail without just cause and reasonable ground."

10. In view of the foregoing circumstances, and even on a tentative appraisal, the case against the applicants is fraught with serious doubts and squarely attracts the principle of "further inquiry" under Section 497(2), Cr.P.C. The unexplained delay in lodging the FIR undermines the spontaneity and credibility of the prosecution's version; the post-mortem report, while noting trauma, categorically excludes sexual assault, thereby negating the gravest charges under Sections 376(3) and 377, PPC; several material witnesses, examined before the trial court, have resiled from their earlier statements and stated that the deceased died a natural death; the case rests solely on circumstantial evidence with material gaps, including the supplementary implication of one applicant as an apparent afterthought; and most material prosecution evidence has been recorded, reducing any apprehension of witness tampering. The legal heirs' No-Objection Affidavits, though not decisive in a non-compoundable offence, reflect absence of hostility and lessen the risk of obstruction to justice. Coupled with the applicants' prolonged pre-trial detention, the unlikelihood of an early conclusion of the trial, and the

constitutional guarantees of liberty and fair trial under Articles 9 and 10-A, further incarceration would serve no legitimate purpose and amount to punitive deprivation of liberty while the presumption of innocence still prevails.

11. Accordingly, both Criminal Bail Application No.S-189 & 190 of 2025 are allowed. The applicants, Syed Asadullah Ali Shah, Syed Fayaz Shah, and Bibi Hina Shah, are admitted to post-arrest bail subject to each furnishing a solvent surety in the sum of Rs. 500,000/- (Rupees Five Hundred Thousand only) and a personal recognizance bonds in the like amount to the satisfaction of the trial court, on the following conditions: (i) they shall not leave the jurisdiction of the trial court without prior permission; (ii) they shall not, directly or indirectly, contact, influence, induce, or tamper with any prosecution witness or evidence; (iii) they shall ensure regular attendance at all trial proceedings unless exempted by the court; and (iv) they shall surrender their passports, if any, to the trial court forthwith. Any violation of these conditions or misuse of the concession of bail shall entail cancellation of this order in accordance with law.

12. Office is directed to place a signed copy of this order in the captioned connected matter.

**J U D G E**