

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.102 of 2025
Criminal Bail Appln. No.130 of 2025

Applicants

Mukhtiar & Yousif @ Younis : through Mr. Atta Hussain Chandio,
in Crl. B.A. No.S-102/2025 Advocate.

Applicant

Ghulam Ali son of Ghulam Nabi : through Mr. Atta Hussain Chandio,
in Crl. B.A. No.S-130/2025 Advocate.

The State : through Syed Sardar Ali Shah Rizvi,
Addl.P.G. Sindh for State.

Complainant, : through Mr. Aftab Hussain shar,
Mst. Kaneeza. Advocate.

Date of hearing. : 27.03.2025

Date of Order. : 27.03.2025

ORDER

Ali Haider ‘Ada’, J. By this common order, I intend to dispose of
aforementioned Crl. Bail applications as same arising out of same FIR and
common question of law as well as facts are involved.

The applicants ***Mukhtiar and Yousif alias Younis*** in Crl. Bail application
No.S-102 of 2025 seeks their admission on pre-arrest bail whereas applicant
Ghulam Ali son of Ghulam Nabi Rajper in Crl. Bail application No.S-130 of
2025 seeks his release on post-arrest bail in Crime No.01 of 2025 registered at
Police Station, Khenwari under Sections 376, 511 PPC. As the incident was
reported on 03.01.2025 while date of incident was disclosed by the complainant
before police on 02.01.2025. The bail plea raised by applicants before Court below
were declined through common order dated 04.02.2025, hence these bail
applications.

2. The facts in nutshell are that complainant Mst. Kaneeza lodged FIR on
03.01.2025 at Police Station, Khenwari stating therein that on 01.01.2025 she
alongwith her husband Umaid Ali and her maternal uncle went to sleeping and on
02.01.2025 at about 1:00 a.m (night) she went to pass Urine back side of her house

and as soon as she sit for passing urine saw accused Mukhtiar and Younis were standing there and accused Mukhtiar Rajper came near to her and was grappled her with intention to commit rape and her shalwar was put off, she raised cries which attracted her husband and maternal uncle and they rescued her, both the accused by taking advantage of darkness ran away and on latter day she appeared at Police Station and lodged FIR.

3. Mr. Atta Hussain Chandio, learned Counsel for the applicants/accused submits that the FIR was lodged after delay of one day as well the 164 Cr.P.C statement of victim was recorded on 22.01.2025 after the lapse of almost 19 days and there is contradiction between FIR and statement u/s 164 Cr.PC. He further submits that the Civil Suit was filed by applicants against the elders/Wadera of area in which complainant party resided and due to such grudge on the instigation of such Wadera false FIR was registered against the present applicants, further submits that actually applicant Mukhtiar sustained injury by the hands of complainant party as date of incident was 02.01.2025 but police under the influence of that Wadera did not record the version of applicant. Lastly he prays for confirmation of bail as well as grant of bail. Reliance is placed upon the case of *Muhammad Ayoub v. The State and another* (2021 P.Crl.LJ 821).

4. On the other hand, Mr. Aftab Ahmed Shar, submits that applicants are specifically nominated in FIR as well in statement recorded u/s 164 Cr.P.C as the same were fully corroborated with each other and has no concern with such Wadera, further submits that attempt for commission of Zina was committed, as the applicants are not entitled for grant of any concession of bail. Reliance is placed upon the case of *Qadeer and another v. The State* (2017 YLR Note 283).

5. Conversely, Syed Sardar Ali Shah, learned Additional Prosecutor General for the State submits that letter was issued to Incharge Forensic and Molecular Biology Laboratory, LUMS Jamshoro with request that DNA samples of victim while such victim was not medically examined only the DNA samples were taken, as applicant Mukhtiar played active role instead to others, *prima facie* the applicants are involved in the commission of offence.

6. I have heard the learned Counsel for the parties and have examined the material available on record.

7. The Section 376 PPC is a punishment while the Section 375 PPC defined rape for discussion the same is essential to be re-produced as under;

[375. Rape. A person is said to commit "rape" if A--

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person B or makes B to do so with A or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of B or makes B to do so with A or any other person; or
- c. manipulates any part of the body of B so as to cause penetration into the vagina, urethra, anus or any part of body of B or makes B to do so with A or any other person; or
- d. applies his mouth to the vagina, anus, urethra or penis of B or makes B to do so with A or any other person, under the circumstances falling under any of the following seven descriptions:-

First.-Against B's consent.

Secondly.-Without B's consent.

Third/y.-With B's consent, which has been obtained by putting B or any person in whom B is interested, in fear of death or of hurt.

Fourth/y.-With B's consent, when A knows that A is not B's husband and that B's consent is given because B believes that A is another man to whom B is or believes herself to be lawfully married.

Fifth/y, With B's consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by A personally or through another of any stupefying or unwholesome Substance, B is unable to understand the nature and consequences of that to which B gives consent.

Sixthly, With or without B's consent, when B is under sixteen years of age; or

Seventhly, When B is unable to communicate consent.

Explanation I.- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when B by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that if B who does not physically resist to the act of penetration, it shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Explanation 3.- In this Chapter,-

“person” means male, female or transgender; and

“rape” includes “gang rape”.

Explanation 4.- A bonafide medical procedure or intervention shall not constitute rape].

The FIR reflects that the accused persons attempted to commit Zina but due to intervention of relatives of victim the accused party escaped good as it is mentioned in the FIR the accused persons tried to commit Zina but commission of Zina is not disclosed that they committed Zina; however, after lapse of 19 days the statement u/s 164 Cr.P.C of alleged victim was recorded firstly she improved her version by introducing the names of applicant Ghulam Ali as an accused and she deposed that Zina was committed by only accused Mukhtiar but such aspect is totally missing in medical evidence because no medical examination of victim was conducted which amounts serious doubt upon prosecution, so, it is very difficult to presumed that Zina was committed in absence of any medical evidence, therefore, attraction of Section 376 PPC requires evidence. The record further reflects that DNA report is not available in police file and even the letter for DNA was issued after the lapse of 20 days. I am fortified with the case of *Salman Mustaq & Others Vs. The State reported in 2024 SCMR 14*.

8. For what has been stated above, I am of the considered view that applicants/accused namely, Mukhtiar and Yousif alias Younis seem to have made out a case for the grant of pre-arrest as well post-arrest bail. Consequently, interim pre-arrest bail already granted to applicants/accused, namely, Mukhtiar and Yousif alias Younis vide order dated 07.02.2025 is hereby confirmed on the same terms and conditions while the post-arrest bail application No.S-130 of 2025 in respect of applicant/accused Ghulam Ali son of Ghulam Nabi Rajper is allowed. The applicant *Ghulam Ali* shall be released forthwith subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand) and PR bond in the like amount to the satisfaction of trial Court.

9. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same in any manner and

shall decide the case on its own merits as per evidence and the material ought to be made available before it.

10. Both bail applications stand disposed of in the above terms.

Office is directed to place signed copy of this order in connected captioned bail application.

J U D G E

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