

ORDER SHEET
THE HIGH COURT OF SINDH, MIRPURKHAS CIRCUIT

Crl. Bail Application No. S-466 of 2026

Applicant	:	Bilal through Mr. Mir Muhammad Nohri, Advocate and Mr. Uzair Waheed Advocate.
Respondent	:	The State through Mr. Neel Parkash D.P.G Complainant through Mr. Mujeeb-ur-Rehman Shar, Advocate.
Date Of Hearing	:	25.09.2026
Date Of Order	:	25.09.2026

ORDER

Muhammad Humayon Khan, J.: Through the instant Criminal Bail Application, the applicant/accused Bilal son of Mithu seeks post-arrest bail in Crime No.35 of 2026, registered at Police Station Diplo for an offence under Section 376 PPC. The applicant was initially declined pre-arrest bail vide order dated 31-07-2026 passed in Criminal Bail Application No.299 of 2026 and, upon his subsequent arrest, his application for post-arrest bail bearing Criminal Bail Application No.335 of 2026 was dismissed by the learned Additional Sessions Judge-I, Tharparkar at Mithi vide order dated 20-08-2026; hence, he has approached this Court seeking his release on bail under Section 497 Cr.P.C.

2. Brief facts of the case, as set out in the FIR, are that on 27-06-2026 at about 2:00 p.m., complainant Muhammad Ashraf, accompanied by Sulleman and Muhammad, while returning to his village, allegedly heard cries emanating from his house. Upon entering the courtyard, they allegedly saw applicant Bilal coming out of the house while tying the *nara* of his shalwar, whereas the complainant's daughter, Mst. Amirzadi, was also found crying and tying the *nara* of her shalwar. She allegedly disclosed that, while she was alone in the house, the applicant had entered therein, removed her shalwar and subjected her to sexual intercourse against her will, whereafter he fled from the spot. The complainant initially approached the local notables and subsequently moved an application before the Court; pursuant to the Court's direction dated 18-07-2026, he approached Police Station Diplo, where FIR No.35 of 2026 was ultimately registered on 21-07-2026 for an offence under Section 376 PPC.

3. Mr. Uzair Waheed, Advocate, bearing Registration No. 53545/LC/Mirpurkhas, sought oral permission to appear and argue on behalf of the

applicant, stating that although he had not yet been enrolled to practice before the High Court, he was well conversant with the facts and circumstances of the case. Considering his familiarity with the matter, permission is granted for the purposes of the present proceedings. Learned counsel thereafter contended that the applicant is innocent and has been falsely implicated in the present case on account of previous enmity between the parties. Further contended that the alleged occurrence took place on 27-06-2026, whereas the FIR was lodged on 21-07-2026 after an unexplained delay of about 24 days, despite the complainant claiming to have reached the place of occurrence immediately; and that such delay, coupled with prior consultation with local notables and recourse to the Court before registration of the FIR, calls for further inquiry into the prosecution version. He further contended that the available forensic material does not corroborate the allegation, as the DNA report concerning the vaginal and anal swabs and clothes of the alleged victim did not detect any male DNA, semen stains or sperm fraction connecting the applicant with the alleged act. According to learned counsel, the absence of incriminating forensic material, when considered alongside the delayed FIR, absence of prompt medico-legal corroboration and surrounding circumstances of the occurrence, brings the case within the ambit of further inquiry contemplated by Section 497(2) Cr.P.C. He further submitted that the applicant is already in judicial custody, is no longer required for investigation, has no previous criminal record, and there is no material suggesting that he would abscond or tamper with the prosecution evidence if enlarged on bail. Learned counsel, therefore, prayed that the applicant be admitted to post-arrest bail and, in support of his submissions, finally placed reliance upon *2025 SCMR 1952*, *2023 SCMR 397*, *2020 SCMR 761*, *2017 SCMR 366*, *2016 SCMR 2176*, *2023 MLD 1072*, *2018 PCr.LJ Note 132*, *2021 MLD 493* and *2019 MLD 1163*.

4. Conversely, learned counsel for the complainant, assisted by learned DPG for the State, opposed the grant of bail and contended that the applicant is specifically nominated in the FIR with a direct and unequivocal role of committing rape upon the victim; that immediately after the occurrence, the victim disclosed the incident and identified the applicant before the complainant and accompanying witnesses, who had allegedly seen the applicant emerging from the house while tying the *nara* of his shalwar; and that the victim has also supported the prosecution version in her statement recorded under Section 164 Cr.P.C. They further contended that the delay in registration of the FIR has been sufficiently explained by the complainant, who initially approached the local notables and thereafter sought recourse through the Court, and therefore such delay, by itself, cannot furnish a ground for bail in an offence of the present nature. As regards the negative DNA report, it was argued that the same is not by itself conclusive of innocence,

particularly when the alleged victim was medically examined after considerable lapse of time, and its ultimate evidentiary effect is to be determined by the trial Court after recording evidence. It was further argued that, at the bail stage, only a tentative assessment of the material is permissible and deeper appreciation of the prosecution evidence would amount to prejudging the trial. They, therefore, prayed for dismissal of the bail application and, in support of their submissions, finally placed reliance upon **2022 P.Cr.LJ 828**.

5. I have heard the learned counsel for the parties, examined the submissions and considered the material described in the record placed before me. The following points arise for determination: (i) whether, on a tentative appraisal, there are reasonable grounds for believing that the applicant is involved in an offence falling within the prohibitory limb of Section 497(1) Cr.P.C.; (ii) whether the interval before registration of the FIR, the medical and forensic material, the asserted enmity and the cited precedents make the case one of further inquiry under Section 497(2) Cr.P.C.; and (iii) whether completion of investigation, the period of detention and the other personal circumstances independently justify his release. These points are considered together, but each submission advanced on the applicant's behalf is dealt with below.

6. The controlling distinction is between reasonable grounds for believing that an accused committed a prohibitory-clause offence and sufficient grounds merely for further inquiry into his guilt. Neither provision authorises an assumption of guilt. A bail court makes a tentative appraisal of the available material; it does not hold a preliminary trial or demand proof beyond reasonable doubt at this stage. Conversely, a serious charge or a direct nomination, without scrutiny of the material actually supporting it, is insufficient by itself. In *Tariq Bashir and five others v The State* PLD 1995 SC 34, the Supreme Court explained this division under Section 497 Cr.P.C. and the need for judicially discernible reasonable grounds. The question, therefore, is whether the defence points, taken with the prosecution material, presently displace those grounds or create a real issue requiring further inquiry within subsection (2).

7. Section 376 PPC, as invoked in the FIR, provides punishment within the prohibitory clause of Section 497(1) Cr.P.C. That classification is a starting point and not the answer to the application. Even in a prohibitory-clause case, bail follows if the available material calls for further inquiry; even in a grave allegation, custody cannot be used as an advance sentence. I have consequently placed no independent weight on the description of the alleged act as 'heinous', on public sentiment or on an assumption that all allegations of sexual assault must result in

refusal of bail. The accused enjoys the presumption of innocence. Equally, that presumption does not remove the obligation under Section 497(1) to consider whether the presently available circumstances furnish reasonable grounds for the particular allegation against this applicant.

8. The prosecution account identifies a specific occurrence on 27-06-2026 at approximately 2:00 p.m., at the complainant's house. It is not alleged that the complainant or his companions actually witnessed the act of sexual intercourse. What they claim to have observed is the applicant leaving the house while adjusting the nara of his shalwar, the victim crying and adjusting her own clothing, followed by her immediate disclosure naming the applicant. Each element must be kept within its proper evidential limits. Adjusting clothing is not, in isolation, proof of rape; the father's account of what his daughter said is not a substitute for her testimony. Yet the alleged contemporaneous observations, if established, provide a setting in which her own account can be assessed. They amount to more than an allegation of identity appearing for the first time weeks after the occurrence.

9. The statement attributed to Mst. Amirzadi under Section 164 Cr.P.C. is significant because the maker herself, rather than merely her father, has directly identified the applicant and maintained the allegation before a judicial officer. At this stage it is material to the tentative assessment that such a statement exists and supports the direct accusation. I do not treat a pretrial statement under Section 164 as a judicial finding of truth, nor as a substitute for her examination and cross-examination at trial. Whether it is voluntary, consistent with her account in Court and reliable in its particulars is for the trial Judge. The present record, as summarised in the application and submissions, identifies no particular contradiction in that statement which could be evaluated now as striking at the heart of the charge.

10. The complainant and the accompanying men are, on the stated version, witnesses to the immediate surrounding events and the alleged disclosure, not eye-witnesses to the physical act. That distinction prevents the Court from inflating their evidence. Equally, sexual offences commonly take place without a third person witnessing the act. In *Atif Zareef and others v The State* PLD 2021 SC 550, the Supreme Court considered the evidential importance of a victim's account which inspires confidence and cautioned against insisting on eyewitness corroboration as an invariable condition. *Zahid v The State* 2022 SCMR 50, though a decision after trial concerning sexual abuse of a child under other penal provisions, reiterates the qualified principle concerning a reliable victim's evidence.

Neither judgment dispenses with careful assessment of credibility, especially where an accused points to concrete reasons for doubt.

11. The FIR was registered on 21-07-2026, approximately twenty-four days after the alleged occurrence. I accept without reservation that this is a material delay; it weakens the value ordinarily attached to prompt reporting and gives a fair opportunity to examine whether the accusation developed through consultation. The prosecution's explanation is not that a police report was made immediately. Rather, the complainant says that he first sought help from local notables and thereafter applied to the Court, whose direction of 18-07-2026 preceded registration of the FIR by three days. This account identifies the route taken, although the precise dates and content of every consultation with the notables are not set out in the draft before me. I do not fill that evidential gap by assumption.

12. That chronology nevertheless has to be assessed alongside the allegation of disclosure at the house on the day of the occurrence. The issue of prior consultation is pertinent to the reliability of the eventual FIR, but does not, without more, erase the separately asserted immediate disclosure and the description of the accused's departure. Nor is a delayed report of alleged sexual violence invariably treated as proof of fabrication: the explanation and its surrounding circumstances matter. The principle is illustrated by *Zahid v The State* 2022 SCMR 50, in which the Supreme Court recognised that trauma and reluctance to report sexual misconduct can account for delay. That principle supplies no automatic excuse here; the complainant's particular explanation must still be tested by evidence at the trial.

13. Counsel's argument that recourse to notables and then to the Court establishes a calculated improvement remains a possibility for cross-examination, rather than a conclusion compelled by the present materials. There is a definite date of alleged occurrence, a particular location, the persons said to have arrived, and a specific application leading to the Court's order of 18-07-2026. Those fixed features make the delayed report a genuine subject for trial, but, taken with the victim's subsequent judicial statement, do not by themselves reduce the accusation against this named applicant to bare suspicion. Should the application to the Court, the witnesses' testimony or the victim's evidence disclose a materially different account, its effect will have to be evaluated on the record then available, including in any lawful renewed bail application.

14. The defence has relied heavily on the report concerning vaginal and anal swabs and clothing: it records no detected male DNA, semen stains or sperm fraction connecting the applicant. The Court must state accurately what such a result means. It provides no scientific corroboration of intercourse by this applicant and

is a circumstance in his favour. On the account presently supplied, however, no interpretable male DNA profile was recovered from those exhibits against which his profile was compared. Absence of detected male material is not the same laboratory finding as an interpretable male profile positively identified and shown to belong to someone else. The Court cannot silently turn a non-detection result into a genetic match for the prosecution; equally, it cannot describe it as a conclusive genetic exclusion of the applicant.

15. The time between 27-06-2026 and the first recorded FIR on 21-07-2026 makes the timing of examination and collection especially important. The supplied draft does not establish the date, storage history or condition of each exhibit, and I make no affirmative finding about any of them. The trial Court must hear the medical examiner, the persons who collected and preserved the samples and, if required, the forensic expert; the report and their evidence may then be assessed for precisely what they prove and fail to prove. A delayed examination may limit the ability to detect transient biological material, but that proposition is no licence to assume that the biological act occurred. The absence of a fresh medical finding and the negative forensic result remain live defence points to be weighed against the direct account.

16. The applicant further says that no prompt medico-legal corroboration is available. I accept that the prosecution cannot claim a recent injury, a fresh finding of penetration or positive semen analysis on the strength of the material presently described. It is equally impermissible to infer from the mere absence of an injury noted weeks later that intercourse did not occur or that the victim consented. Medical evidence has a defined role and cannot decide every question of identity, force and credibility on its own. The suggestion that the act, if any, might have been consensual, or amounted only to an attempt, cannot be resolved in the abstract: those alternatives must be grounded in the accounts and circumstances actually available for tentative appraisal and finally resolved at trial.

17. The alleged previous enmity requires equally careful treatment. Counsel has asserted it, but the submissions reproduced in the present draft identify no date, proceeding, transaction or other specific source of hostility and no material showing that the victim's account was procured through it. I do not find as a fact that there was no enmity; nor do I presume that a complaint by a daughter is necessarily immune from outside influence. At present the general allegation does not explain away the account of an immediate disclosure, the identification in the Section 164 statement, or the claimed circumstances in which the applicant was encountered. If documents or reliable testimony establishing a motive to falsely

implicate are produced, their effect must be assessed without any burden being placed on the accused to prove his innocence.

18. It is helpful to examine the authorities relied upon by learned counsel individually. In *Muhammad Shakeel v The State and another* 2025 SCMR 1952, the Supreme Court granted post-arrest bail notwithstanding medical and DNA findings which indicated intercourse. The Court identified specific questions about force or consent, the father's presence while the alleged act occurred twice, the unexplained account of how another person entered the house, a discrepancy as to who reported the matter after the victim and her father had attended the police station, and matters put in cross-examination to the victim on her Section 164 statement. There had also been substantial delay in recording trial evidence after submission of the challan. Those decisive features, rather than the mere absence or presence of DNA, produced further inquiry. Here the stated event is one identified incident, and no comparably specific internal defect in the victim's statement or comparable trial delay has been demonstrated on this application.

19. *Muhammad Aslam v The State and others* 2023 SCMR 397 likewise assists counsel on the governing law but turns on facts unlike those here. In that matter the alleged rape was said to have occurred two to three months before the FIR, without a definite date, time or explanation for the delay. No DNA or semen grouping was available, while a video relied upon by the prosecution bore a date apparently inconsistent with the reported event and the source device had not been examined. The Supreme Court expressly acknowledged that an independent and straightforward victim's account could suffice, then granted bail because those identified difficulties required further inquiry. The fixed date and place alleged here, the claimed immediate disclosure and the specific identification of Bilal must be evaluated rather than displaced by borrowing the conclusion reached on that different record.

20. *Haibat Khan v The State and others* 2016 SCMR 2176 deserves particularly close attention. A fourteen-day FIR delay, absence of injury, negative chemical and DNA reports and the lack of a witness to the act were relevant there. The Supreme Court also considered the live possibility that the proved conduct was only an unsuccessful attempt or preparation; decisively, the investigating agency had found the allegation false and submitted a report seeking cancellation of the FIR. No such cancellation report or affirmative investigative exoneration has been pointed out here. It would be incorrect to distinguish the case by suggesting that the complainant in the present matter actually saw the act: he did not claim to. The meaningful differences for present purposes are the particular immediate

surrounding observations relied upon here and the absence, on this record, of an investigative conclusion rejecting the victim's account.

21. In *Muhammad Tanvir v The State and others* 2017 SCMR 366, the Supreme Court assessed a delayed FIR and examination, a DNA report which was not positive and, in addition, the police finding that an alleged co-accused was innocent. Their cumulative effect warranted further inquiry. Counsel has shown no corresponding exoneration of a co-accused, competing account from the investigation or other equivalent finding in the present materials. The negative report and the delay in Bilal's case have not been ignored merely because they were also present in Muhammad Tanvir; they are considered together with the affirmative accounts available here. A factual bail order cannot be applied by selecting two of its circumstances and treating the remaining circumstances as immaterial.

22. *Babar v The State* 2020 SCMR 761 involved an entirely different defect in attribution. The victim's Section 164 statement named another man and did not identify that petitioner by name; his alleged association with the named person lacked supporting investigative detail, against a background of prior litigation. Pre-arrest bail was confirmed on those grounds. The applicant before me is directly named by the alleged victim herself in a judicial statement, according to the draft, and is said to have been seen leaving the relevant house immediately after her cries. The discussion in Babar concerning investigation practices cannot transform a Section 164 statement identifying this applicant into one which does not identify him.

23. In *Kashif v. The State and another* 2021 MLD 493, the initial report related to a young woman leaving home, on two occasions, without initially naming the accused; her later account followed recovery, and the Court dealt with the failure to obtain the prescribed DNA samples at all. Here the identity of the alleged assailant forms part of the prosecution account from its inception and the reported difficulty is a test yielding no male profile, not a complete failure to undertake testing. The principle that forensic samples should be sought in accordance with Sections 164-A and 164-B Cr.P.C. remains important. *Salman Akram Raja and another v. Government of Punjab through Chief Secretary and others* 2013 SCMR 203 likewise emphasises proper DNA collection and preservation in sexual-offence investigations. Neither authority directs the Court to deem a non-detection report either positive evidence for the prosecution or a conclusive acquittal of the accused.

24. *Dr. Farrukh Sher Khan v. The State* 2018 PCr.LJ Note 132 is distinguishable on a scientifically important point. There, male DNA or sperm material was identified on the complainant's clothing but the accused doctor was

not its contributor; the investigating officer recommended proceeding on an attempt rather than a completed rape allegation, and the complainant could not be located despite notices. Those were additional concrete reasons for further inquiry. In the present case, as described in the submissions, no male fraction was detected at all; there is consequently no identified alternate male contributor on these exhibits. No equivalent investigative recommendation reducing the charge, or withdrawal of the victim's Section 164 accusation, has been identified. These distinctions do not neutralise the negative report, but prevent a different laboratory result from being treated as identical.

25. Two further citations offered on the applicant's side cannot carry the proposition for which they were invoked. *Naseem Mangnejo and another v. The State 2023 MLD 1072* concerns bail in an alleged kidnapping for ransom case, including issues about a particular accused's role and parity; it does not decide how a negative swab report is to be weighed against a rape complainant's judicial account. *Ghulam Ali v Abu Bakar 2019 MLD 1163* is an appeal against a conviction under the Illegal Dispossession Act, 2005, in which deficiencies in proof of land possession were considered after trial. Its principles about the prosecution's ultimate burden of proof remain fundamental, but its disposition cannot supply a factual ground for post-arrest bail under Section 497 Cr.P.C. in this prosecution. Each cited judgment has been considered for its actual issue, not rejected merely because the reported result favoured another accused.

26. The authority relied on for the complainant, *Aziz-ur-Rehman alias Babul v The State 2022 PCr.LJ 828*, is also to be applied with care. The Sindh High Court there refused pre-arrest bail where the complainant's direct account and her Section 164 statement identified the accused, and the collection of samples twelve days after the incident explained why an unhelpful DNA result could not, alone, decide the matter. That judgment supports the limited proposition that a victim's account which is provisionally credible may be material despite an unhelpful late forensic result. Its FIR had been lodged promptly, unlike this one, and pre-arrest bail has its own requirements. I rely on the legal reasoning only to the extent it fits the present post-arrest test; the twenty-four-day FIR interval here is separately addressed above, and no social stereotype about what a complainant would or would not allege is adopted.

27. The comparison of these decisions demonstrates why neither side can prevail by counting authorities. Cases granting bail after an exculpatory investigative report, a mismatch with an identified DNA contributor, material contradictions in a victim's account, or prolonged non-prosecution of trial evidence

do not pronounce a rule that every delayed sexual-offence FIR accompanied by a non-detection report must result in bail. Equally, Aziz-ur-Rehman alias Babul and the decisions concerning credible victim testimony do not require refusal of bail whenever a Section 164 statement names an accused. The statutory test, the timing and precise content of the forensic result, the quality of the identifying evidence, and the existence or absence of case-specific reasons for doubting it must each be examined.

28. On that cumulative appraisal, the defence has raised substantial points for trial. The FIR interval is substantial; the medical examination was not prompt on the account placed before me; and the laboratory findings afford no corroboration of intercourse by the applicant. I have given each point favourable weight in assessing his application. They do not, at this stage, negate the particular allegations that the victim immediately named him when the complainant and two accompanying men arrived, that those men encountered him leaving in the condition described, and that she later repeated her accusation before a Magistrate. The enmity assertion has not been particularised, and no concrete inconsistency in her judicial account or exonerating investigative finding has been shown. On this limited record, the affirmative identification and accompanying circumstances still furnish reasonable grounds for the accusation under Section 497(1) Cr.P.C.; the contrary matters are not of such a nature as presently to bring the case within Section 497(2). This is a finding about bail, not a finding that the allegation has been proved.

29. Counsel has also submitted that the applicant is no longer needed for investigation, has no previous conviction or reported criminal history and is unlikely to abscond or influence witnesses. I have taken those submissions at their full stated value for present purposes; the prosecution has not identified a particular attempt to obstruct the proceedings. In a matter where Section 497(2) applies, and especially where trial has stalled, such circumstances can have considerable force. Here, however, the existence of reasonable grounds in respect of a prohibitory-clause offence is the governing issue; completion of investigation and absence of an adverse antecedent do not, without more, convert the case into one of further inquiry. Custody since the rejection of post-arrest bail on 20-08-2026 has not, by the date of this order, itself become a demonstrated period of inordinate delay in taking evidence.

30. The earlier refusal of pre-arrest bail dated 31-07-2026, and the refusal of post-arrest bail by the learned Additional Sessions Judge on 20-08-2026, have been noticed only to explain the procedural history. Neither refusal proves the truth of the charge, bars an independent appraisal here, or relieves the prosecution of

showing reasonable grounds. Likewise, this refusal will not immunise the prosecution from scrutiny if, after this order, a material witness changes the account, the full forensic material proves materially different from that described to this Court, a genuine basis of false implication is established, or unreasonable delay in trial develops without fault on the applicant's part. Any renewed request must be determined on its own legally relevant record, without treating the present findings as a final determination.

31. For the foregoing reasons, the applicant has not, on the material presently before this Court, made out a case for post-arrest bail under Section 497(2) Cr.P.C. The instant Criminal Bail Application is accordingly dismissed.

32. Before parting with the order, having regard to the nature of the accusation and the fact that the applicant is presently in custody, the learned trial Court is directed to proceed with the trial on a priority basis and make every endeavour to conclude the same, preferably within a period of three (03) months from the date of receipt of this order, without granting unnecessary adjournments to either side. The learned trial Court shall fix short dates and ensure that, once a prosecution witness is in attendance, his/her evidence is recorded without avoidable deferment. The Senior Superintendent of Police (SSP), Tharparkar @ Mithi, is specifically directed to ensure the attendance of all prosecution witnesses, particularly the police officials and other witnesses whose presence is to be secured through the police establishment, before the learned trial Court on each date fixed for prosecution evidence. No lapse on the part of the police officials in producing or securing the attendance of prosecution witnesses shall be permitted to become a cause for prolongation of the trial. The prosecution shall likewise ensure timely production of the medical and forensic witnesses together with the relevant record in accordance with law. The learned trial Court shall not grant any unnecessary adjournment and shall regulate the proceedings in such manner that the trial is brought to its logical conclusion within the aforesaid period, while ensuring due observance of all procedural safeguards and the fair-trial rights of the accused. A copy of this order shall be transmitted to the learned trial Court as well as to the SSP Tharparkar @ Mithi for information, strict compliance and necessary action.

33. It is expressly clarified that every observation on the FIR, the witness accounts, the Section 164 Cr.P.C. statement, medical evidence, DNA analysis, asserted enmity and the applicant's involvement is purely tentative and confined to disposal of this bail application. The learned trial Court shall assess all admissible evidence independently after examination and cross-examination, uninfluenced by any expression in this order. The applicant retains every defence available in law

and the presumption of innocence until a judgment following trial determines otherwise.

J U D G E

APPROVED FOR REPORTING
FAISAL