

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 793/2025

Applicant : Sabir son of Muhammad Afzal,
Through Mr. Liaquat Ali Khan, Advocate

Respondent : Complainant
through Mr. Qamaruddin Nohri, DPG Sindh

Date of hearing : 21.04.2025
Date of order : 24.04. 2025

ORDER

KHALID HUSSAIN SHAHANI, J. Applicant Sabir seeks post-arrest bail in a case bearing Crime No.78/2025, offence under section 365-B/376/34 PPC r/w section 3 of Prevention of Trafficking in Persons Act of P.S Zaman Town Karachi. Bail of applicant was dismissed vide order dated: 17-02-2025, by the learned VIITH Additional Sessions Judge/GBV Model Court Karachi East.

2. According to the prosecution theory, on 04-12-2024 at about 0930 hours, complainant had gone to purchase milk and, upon reaching the corner of her street, was accosted by the applicant Sabir and his unidentified friend, who allegedly placed a cloth over her face, rendering her unconscious. Upon regaining consciousness on the following day (05-12-2024), she claimed to have found herself in a room where Sabir and his two friends were present and laughing upon seeing her. It was alleged that the accused had committed zina with her while she was unconscious. The complainant further alleged that the accused were operating a prostitution ring and subsequently called 8 to 10 additional persons, who also committed zina with her. She claimed to have escaped after Asr prayers on 05-12-2024, boarded a rickshaw, and learned that she was in KDA Employees Society. Consequent upon; case was registered inter alia on above facts.

3. Learned counsel for the applicant contended that the FIR suffers from a gross delay of more than 47 days, which has not been plausibly explained. The complainant, by her own admission, escaped on 05-12-2024, yet chose not to approach any law enforcement agency until mid-

January 2025. No complaint or report dated 05-12-2024 is available on record, which raises serious doubts about the veracity of the prosecution story. It was further argued that the CDR of the complainant's phone was collected by the investigating officer, which indicates that she was present at the same place during the alleged period and there is no evidence to suggest she was abducted or forcibly taken away. The case is, thus, of dual versions, the one narrated by the complainant and the other borne out by the findings of the investigation, casting doubt on the prosecution's version. Learned counsel also submitted that some prosecution witnesses stated during investigation that there existed a financial dispute between the complainant's father and the applicant, thereby pointing toward malice or ill will behind the lodging of the FIR. It was stressed that in recent times, such allegations are sometimes misused by women as a tool to falsely implicate adversaries. Moreover, no DNA evidence is available to substantiate the commission of rape, and the medical report is silent on any fresh sexual activity or signs of violence, which one would expect in a case involving alleged gang rape. Therefore, it was argued that the case calls for further inquiry and the applicant is entitled to the benefit under Section 497(2) CrPC.

4. On the other hand, the learned DPG for the State opposed the bail plea on the ground that the allegations are of serious and heinous nature, involving gang rape and human trafficking. It was argued that delay in lodging the FIR, although present, does not negate the offence, especially in cases of sexual violence where victims often remain under trauma and fear. The learned DPG emphasized that the complainant's statement is consistent and implicates the applicant directly in the commission of a grave offence. It was further submitted that the absence of visible injuries or DNA evidence may not, by itself, exonerate the accused at the bail stage, particularly in light of the allegations made for offence under Section 376 PPC. It was argued that the discretion of bail should not be exercised in favour of an accused charged with such repugnant and socially devastating acts.

5. The complainant in her FIR narrated a summarized version of the alleged incident; however, in her subsequent statement under Section 161

Cr.P.C. recorded on 07-02-2025, she introduced an extraordinary and exaggerated narrative, alleging additional facts which were neither mentioned in the FIR nor substantiated through contemporaneous evidence. This deviation raises serious doubts regarding the credibility of her account. Furthermore, in light of the alleged financial dispute between the complainant's father and the applicant, as confirmed by witnesses during investigation, the possibility of false implication on account of enmity cannot be ruled out at this stage. Additionally, the delay of more than 47 days in lodging the FIR, without any medically or psychologically justifiable explanation, is an inordinate lapse that materially affects the prosecution's case, particularly where the allegations are of such serious and grave nature. The complainant's failure to take any action or file a complaint during this interregnum from 05-12-2024 to 17-01-2025 renders her version suspect.

6. Moreover, the CDR obtained by the investigating officer undermines the prosecution's claim of abduction and illegal confinement, as it reveals that the complainant remained within the same geographical area and her movements were not restricted. The medical report is also silent regarding any fresh signs of sexual assault or violence, which one would ordinarily expect in an allegation involving gang rape.

7. These aspects, coupled with the existence of dual versions, one furnished by the complainant and the other emerging from the investigation, create a factual controversy that cannot be resolved without the benefit of evidence recorded during trial. Therefore, at this stage, the case clearly falls within the ambit of further inquiry, as envisaged under Section 497(II) Cr.P.C. Accordingly, the applicant is admitted to post-arrest bail subject to furnishing a solvent surety in the sum of Rs.200000/- (Rupees two hundred thousand only) and a Personal Bond in the like amount to the satisfaction of the learned trial Court. The observations made herein are tentative in nature and shall not influence the learned trial Court at the time of final adjudication.

J U D G E