

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Bail Application No.S- 29of 2025
[Atif @ Kanu& another v. The State]

Applicants : Atif @ Kanu&Abid Ali
throughMr. Ahmed Nawaz Chang, Advocate

The State : Through Ms. Sobia Bhatti, A.P.G.

Complainant & Victim present in person

Date of hearing : 07.03.2025

Date of Decision : .03.2025

O R D E R

MIRAN MUHAMMAD SHAH, J .Through this Criminal Bail Application, ApplicantsAtif @ Kanu son of Muhammad Ashraf Ghorl and Abid Ali son of Muhammad AkramGhorlseek post arrest in Crime No. 108 of 2024 registered at Police Station Bandhiunder Sections377, 506/2 & 34 PPC. Earlier the Applicants moved bail application before learned Additional Sessions Judge-III Shaheed Benazirabad which was declined vide order dated 28.11.2024. Subsequently the Complainant and the victim sworn their affidavit extending their no objections for grant of bail to the applicants and on the basis of said affidavits the applicants moved a bail application again which was also dismissed. Hence the instant bail application.

2. Brief facts of the case as stated by the Complainant in the FIR are that his deceased cousin Dildar Ali Khokhar washaving two sons and one daughter, out of which Deedar Ali aged about 12/13 years and they all are residing with their grandfather namely Muhammad Hassan Khokhar. On 7.11.2024 at evening time, the complainant along with his relative namely Rahim Bux son of Pir Bux Khokhar and Salman Khan son of Moula Bux Khokhar together were present in the house of uncle of complainant namely Muhammad Hassan while the nephew of complainant was playing in the street and after passing sometime he did not return back and when saw outside he was not present, then complainant along with witnesses kept on search of nephew and at about 07:30 p.m night time reached near Higher Secondary school Bandhi where complainant party saw and identified each to be [1] Atif @ Kannu son of Ashraf Ghouri [2] Abid son of

Muhammad AkramGhouri both R/O MoulaAzadpur City Bandhi, who were committing unnatural offence with the nephew of complainant while Atif @ KannuGhouri was having pistol in his hand and they by seeing the complainant party run away, the complainant party went and saw that the nephew of complainant was in unconscious condition, his shalwar was lying down and was dirty, the complainant party asked the nephew who disclosed that Atif @ KannuGhori and AbidGhori by showing pistol and issuing threats number wise committed sodomy, the complainant party came at police station Bandhi and obtained letter for medical treatment, got the treatment and subsequently registered the above FIR.

3. Learned Counsel for the applicant argued that there is inordinate delay of one day in lodging the FIR, hence due deliberation and consultation cannot be ruled out; that the place of incident was thickly populated area but nobody had seen the alleged incident; that no any mark of violence was found on the person of victim during his initial medical examination; that no any specific role has been assigned to any of the applicants; that the Complainant and the victim had given the affidavits of no objection for grant of bail to the applicants. He places his reliance upon 1997 P.Cr.L.J 1193 and 1987 MLD 1780.

4. Ms. Sobia Bhatti learned APG vehemently opposed the grant of bail to the applicants on the ground that the applicants are nominated in the FIR with specific role; that the applicants were charged with the offence of unnatural offence punishable under Section 377 PPC which fall within the prohibitory clause of Section 497 Cr.P.C. that the offence is heinous and non-compoundable as it is against the society, thus the no-objection affidavits sworn by the Complainant and victim have no value in the eyes of law; that the medical examination of the victim was conducted within three hours of the incident which shows that the offence has been committed.

5. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and with their able assistance I have gone through the available record.

6. The record shows that second bail application filed by the applicants was based on the affidavits filed by the Complainant and the victim giving their no objection to the grant of bail to the present applicants / accused. Infact both have back tracked from their original version given by them in the FIR as well as in their Statements under Section 164 Cr.P.C. They have infact accused the police of pressurizing them to name the present applicants/

accused to have committed the offence. This version is completely contradictory to the version given in the FIR. The Complainant and victim were also present at the time of hearing of this bail application and when inquired about back tracking from their original version to which they were unable to give any satisfactory reply. In such circumstances my observation is that their version given in the affidavit filed is afterthought and not truthful perhaps the Complainant / uncle of the victim has used his orphan nephew who is stated to be of 12/13 years old for his own ulterior motives in order to obtain some gratification in monetary form, therefore, the version as incorporated in the affidavits cannot be relied upon and in fact have weakened the case of applicants / accused for grant of bail. Even otherwise Section 377 PPC does not fall within the prohibitory clause and carries punishment of life imprisonment. Such offences are considered heinous and against the society at large. Lenient view cannot be taken in such matters while granting bail. The case law relied upon by the counsel for applicant is distinguishable; therefore, I am of the view that the applicants / accused have failed to make out a case for grant of bail; therefore, the bail is declined and the Impugned order of learned Trial Court is upheld.

This bail application stands dismissed.

JUDGE

6. From perusal of record, it appears that the applicants / accused are nominated in the FIR and complainant along with relatives seen the applicants committing sodomy with the victim. The victim boy has also corroborated the contents of FIR. Offence under section 377, P.P.C. falls within the ambit of prohibitory clause of Section 497, Cr.P.C. The victim boy was also examined by the doctor and he observed in the medical certificate that during his perianal examination, the separation of his buttocks was painful.

7. From the tentative assessment of material collected by the police during investigation prima facie connect the applicants /accused with the alleged offence and further there exist no enmity between the parties to falsely implicate the applicants. Moreover, the applicants /accused have committed an offence of moral turpitude and such like persons does not deserve any concession of bail in exercise of discretionary powers under section 497, Cr.P.C. Consequently, this Bail Application is dismissed.