

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 921 of 2025

Applicant : Muhammad Nadeem son of Ali Afsar
Through Mr. Saeed Ahmed Khoso, Advocate

Respondent : The State
Through Ms. Rubina Qadir, APG Sindh.

Date of hearing : 08.05.2025

Date of order : 20.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Muhammad Nadeem seeks seeks post-arrest bail in a case bearing crime No. 192/2024 registered at Police Station Baloch Colony, Karachi for offence u/s 377 & 34 PPC. His earlier bail plea was declined by the court of learned IIIrd Additional Sessions Judge Karachi South vide order dated 26.03.2025.

2. The allegation, in essence, is that the applicant and co-accused subjected a 16-year-old boy to unnatural offence and shot his obscene pictures and video.

3. The learned counsel contended that applicant is innocent and has been falsely implicated in the present case. According to him, the registration of the FIR is the result of a prior enmity between the applicant and the complainant, who is allegedly misusing his influence by virtue of his position as a police informer to implicate the applicant in a fabricated case. It is asserted that the FIR does not stem from any direct knowledge or personal observation but rather rests entirely on hearsay, and notably, there is no mention of any eyewitness who directly saw the alleged incident. Furthermore, the FIR was lodged after an unexplained delay of six days, which, as argued by the counsel, is indicative of afterthought and manipulation, thereby casting serious doubt on the veracity of the prosecution's version of events. The learned counsel further submits that the medical examination and forensic analysis conducted during the investigation do not lend any support to the allegations made in the FIR. In particular, he points out that the DNA report explicitly states that no seminal material was found on the articles submitted for forensic testing,

thereby undermining the central accusation against the applicant. Additionally, it is brought to the Court's attention that the applicant has already undergone more than ten months of incarceration, and despite this considerable passage of time, the trial proceedings have not been concluded. In support of the bail plea, the learned counsel has invoked the third proviso to Section 497(1) of the Code of Criminal Procedure, 1898, which provides that in cases where the offence does not fall within the category of capital punishment and the trial is not concluded within a period of one year, the accused becomes statutorily entitled to be released on bail unless it can be demonstrated that the delay in conclusion of the trial is attributable to the accused himself. In the present case, no such blame can be placed upon the applicant, and therefore, according to the counsel, he is legally entitled to be enlarged on bail.

4. Conversely, the learned Additional Prosecutor General has strenuously opposed the grant of bail to the applicant. He has argued that the allegations levelled against the applicant are of a grave and serious nature, particularly as they pertain to a vulnerable victim. He has expressed the apprehension that if released on bail, the applicant may attempt to interfere with or influence the prosecution witnesses, thereby obstructing the course of justice. Learned APG concedes that the DNA report does not indicate the presence of seminal material; however, he maintains that this alone does not exonerate the applicant, especially when the statement of the victim under Section 164 of the Code of Criminal Procedure has been recorded and it substantiates the allegations contained in the FIR. He submits that in cases of this nature, particularly those involving offenses against the modesty, delays in reporting the incident are not unusual. Families often hesitate to immediately approach law enforcement due to concerns relating to societal honour and family dignity. Therefore, the delay in lodging the FIR should not be deemed fatal to the prosecution's case. He further explains that the lack of biological evidence, as observed in the DNA report, is a consequence of the belated preservation and submission of forensic samples. He refers to Section 164-B Cr.P.C., which requires that such samples ideally be obtained within 72 hours of the incident for effective analysis. Since the FIR itself was lodged with delay, the timely collection and preservation of forensic evidence was naturally

compromised. Hence, the absence of conclusive DNA results cannot be construed as a benefit to the accused. In conclusion, the learned Additional Prosecutor General submits that the applicant does not merit the concession of bail at this stage, and the bail application may therefore be dismissed.

5. In view of the foregoing discussion, it emerges that although the FIR was registered with some delay, such delay, in the absence of any established motive of false implication or previous enmity, is not necessarily fatal to the prosecution's case. The consistent judicial view, as reflected in various precedents, is that delay in reporting offences of a sensitive nature, particularly those involving sexual abuse of minors, must be appreciated in the context of societal norms, family honour, and psychological trauma, which often inhibit immediate reporting. In the present matter, no prior animosity between the parties has been shown that could cast doubt on the complainant's motives.¹ The recovery of the accused's mobile phone containing a video, which has been forensically extracted, lends preliminary corroboration to the prosecution's stance. While it is true that the DNA report indicates absence of seminal material, the delayed collection of forensic samples, as conceded by both sides, may reasonably explain this deficiency. Importantly, the law does not make DNA evidence an indispensable requirement for conviction in such offences; rather, the sole testimony of a victim, if found to be credible and confidence-inspiring, is sufficient to sustain the charge at the bail stage.²

6. The record also does not reflect any undue delay in the conduct of the trial so far, and the statutory period of one year under the third proviso to Section 497(1) Cr.P.C. has not yet lapsed. Thus, the argument of statutory entitlement to bail on account of prolonged incarceration is presently premature. In light of the above, and bearing in mind the principles governing the grant or refusal of bail, including the need to undertake only a tentative assessment of the material without delving into

¹ *Muhammad Ajaib Vs. Mehboob Khan* (2000 P.Cr.L.J 1484), *Haq Nawaz Vs. The State* (2008 P.Cr.L.J 484), *Mian Muhammad Nawaz Sharif Vs. The State* (PLD 2002 Karachi 152), *Sher Khan Vs. The State* (1996 P.Cr.L.J 668).

² *Shakeel Ahmed Vs. The State* (PLD 2010 Supreme Court 47) it was held (in paragraph 9), *Haji Ahmad v. State* (1975 SCMR 69), and in case of *Irfan Ali Sher v. State* (Jail Petition No. 324/2019, decided on 17 April 2020), *Criminal Appeal No. 251/2020* decided on 04.01.2021 and *Criminal Petition No. 75-Q/2021* decided on 21.10.2021.

deeper merits, I am of the view that sufficient prima facie material exists on record to connect the applicant with the commission of alleged offence. The allegations are serious, specific, and not devoid of initial corroboration. At this stage, no ground for further inquiry or any exceptional circumstance justifying the grant of bail has been made out. Accordingly, the bail application stands dismissed. However, learned trial court is expected to conclude trial within a reasonable time, preferably 45 days on receipt of this order.

J U D G E