

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.676 of 2025

Applicants : i. Mst. Hooria Saleem D/o Muhammad Saleem Shaikh
ii. Syed Ashraf Chaudhary S/o S. Anwar Chaudhary
through Mr. Ali Mardan Chang, advocate.

Complainant : Fazal-e-Rabbani S/o Talib Ali (in person)
Through Mr. Ali Haider, advocate

Respondent : The State
through Ms. Rahat Ehsan, Addl. P.G.

Date of short order : 20.05.2025

Date of reasons : 22.05.2025

REASONS

KHALID HUSSAIN SHAHANI, J. – This criminal bail application seeks pre-arrest bail for the applicants, Mst. Hooria Saleem and Syed Ashraf Chaudhry, in respect of a crime bearing Crime No.32/2025, registered at Police Station Khuwaja Ajmer Nagri, Karachi, for offence under Section 494 PPC. Their earlier bail plea was declined by the court of learned IInd Additional Sessions Judge Karachi Central vide order dated 12.03.2025.

2. The case as set up in the FIR is that the complainant, Fazl-e-Rabbani, was married to Mst. Hooria Saleem on 29.06.2019. He claims that despite obtaining khula from the Family Court at Sukkur on 04.01.2023, there was reconciliation between the parties on 06.02.2023 with the understanding that he would arrange for her transfer to a school in Karachi. However, on 16.05.2024, while the complainant was in Sukkur, he was informed that Mst. Hooria Saleem had contracted a second marriage with Syed Ashraf Chaudhry, allegedly during the subsistence of their first marriage. The complainant further alleges that when he confronted the applicants, he was attacked and threatened.

3. Learned counsel contended that they have been falsely implicated in this case with malafide intentions and ulterior motives arising from a family dispute. It was argued that Mst. Hooria Saleem had lawfully obtained a decree of khula from the competent Family Court, and only

thereafter contracted marriage with co-applicant Syed Ashraf Chaudhry. In support, copies of the order passed in Family Suit No. 303 of 2022 and the divorce registration certificate were produced. Learned counsel further submitted that the offence under Section 494 PPC is bailable and non-cognizable, hence the applicants are entitled to bail as a matter of right. He relied that august Supreme Court reaffirmed in its settled principle that in bailable offences, the grant of bail is not a matter of judicial discretion but a statutory right, unless special circumstances are shown to justify refusal. It was urged that no such exceptional circumstances exist in the present case. The learned counsel also emphasized the nine-month delay in registration of FIR, which suggests an afterthought, and highlighted the applicants' respectable background, cooperation with investigation, and absence of any criminal history.

4. On the other hand, learned APG, duly assisted by the complainant who is himself an advocate, opposed the confirmation of bail on the ground that the documents relating to khula are disputed and require determination through evidence. She submitted that the authenticity and legal effect of such documents can only be established during trial, particularly in light of the complainant's claim of reconciliation post-khula. It was further argued that Section 494 PPC, though bailable, is not an offence where pre-arrest bail should be granted routinely, especially when there are serious allegations touching upon the sanctity of marriage. The delay in FIR registration, while acknowledged, was asserted to be a matter for trial rather than for grant of pre-arrest bail. Learned APG also expressed concern regarding the potential for the accused to influence witnesses or interfere with the investigation.

5. After considering the submissions of both sides and perusing the material on record, this Court is of the view that the primary question raised by the complainant is that Mst. Hooria Saleem contracted a second marriage while her first marriage was still subsisting. However, this contention is denied by the accused, particularly Mst. Hooria Saleem, who asserts that she had sought khula through Family Suit No. 303 of 2022 from the Family Court at Sukkur. The decree to the extent of dissolution of marriage was passed, and the remaining relief regarding dowry articles was later withdrawn. A copy of the partial decree has also

been placed on record. Whether or not the decree of khula was sufficient to dissolve the marriage prior to the alleged second marriage is a matter which requires detailed factual and legal examination, and cannot be conclusively determined at the bail stage. This assertion by the complainant, being central to the controversy, involves disputed factual questions best left for adjudication by the trial Court upon recording of evidence.

6. In the overall facts and circumstances, it appears that the case arises out of a personal and familial dispute, and exaggeration or embellishment of facts for the purposes of false implication cannot be ruled out. The delay in registration of FIR also casts doubt on the spontaneity of the complaint and supports the inference of deliberation or malafide. Most significantly, the offence under Section 494 PPC is bailable and non-cognizable in nature and the Honourable Apex Courts in number of cases bail in such offences is the statutory right of the accused, which cannot ordinarily be denied unless exceptional circumstances exist, none of which are evident in the present case. No credible apprehension has been expressed by the prosecution of the applicants absconding or influencing the course of justice. On the contrary, the applicants appear to have joined investigation and are willing to face the trial.

7. Accordingly, for the reasons discussed above, the interim pre-arrest bail granted to the applicants vide order dated 14.03.2025 is confirmed on the same terms and conditions earlier imposed through short order dated 20.05.2025 and these are the reasons thereof. The applicants are directed to continue cooperating with the investigation and attend trial proceedings regularly without fail.

J U D G E