

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1781 of 2025

Applicant : Shahid Khan son of Kaza Khan
through Ms. Hassan Bano,
Advocate

The State : Through Ms. Seema Zaidi,
Additional Prosecutor General,
Sindh

Date of hearing : 07.11.2025

Date of decision : 07.11.2025

ORDER

Jan Ali Junejo, J.- By this order, I intend to decide the instant post-arrest bail application filed under Section 497 Cr.P.C seeking the release of the applicant Shahid Khan, who stands charged under Sections 377-B and 34 P.P.C. in FIR No.96/2024 of P.S. Mominabad, Karachi. The earlier bail application No. 3144 of 2025 filed on behalf of the applicant was declined by the learned Xth Additional Sessions Judge Karachi West (Court for Gender Based Violence Cases) vide order dated 03-07-2025.

2. As per the FIR lodged by the complainant Muhammad Kamran, the victim, aged about 13/14 years, disclosed that on 16.02.2024, while returning home, he was forcibly intercepted by three accused persons, namely (i) Sher Khan, (ii) Waqar, and (iii) Shahid Khan (present applicant). All three allegedly took the minor victim into a ruin-type room near Zubaida Masjid. It is specifically alleged that Sher Khan and Waqar committed unnatural sexual assault upon the victim, while the present applicant Shahid Khan facilitated the commission of the offence by guarding the place, watching for passersby, cooperating with co-accused, and ensuring that the offence was completed without interruption.

3. As per the FIR and statement of the victim, although Shahid Khan refused to commit the act himself, he actively aided, abetted, and facilitated the principal offenders, thus attracting Section 34 P.P.C. as well as constructive liability under Section 377-B P.P.C.

4. Learned counsel for the applicant argued that the applicant is innocent and has been falsely implicated. It is contended that the FIR suffers from a delay of five days, casting doubt on the prosecution's version. It is argued that no specific allegation of committing sodomy has been levelled against the applicant, and that he merely accompanied the co-accused. Learned counsel further submitted that the place and time of incident (near Zubaida Masjid at Isha prayer time) makes the story doubtful. It is further contended that the applicant has no direct role in the act itself and thus Section 34 P.P.C is inapplicable. Lastly, bail was requested on the ground that the applicant is behind bars since arrest and is no more required for investigation.

5. Learned APG vehemently opposed the bail and submitted that the applicant is specifically nominated in the FIR. It was argued that the applicant's role is clearly defined in the FIR and in the victim's statement, he facilitated the commission of the unnatural offence, stood guard, helped secure the area, and enabled the principal accused to commit the sexual assault. It was submitted that the medical examination confirms sexual assault upon the minor victim, which strongly corroborates the prosecution case. Learned APG placed reliance on various precedents of the Hon'ble Supreme Court, arguing that the statement of the victim in cases of sexual assault carries strong evidentiary value and is sufficient for establishing prima facie involvement of the accused at bail stage.

6. I have considered the submissions advanced by learned counsel for the parties and examined the available material with due care, keeping in view the settled principles governing tentative assessment at the bail stage. The record reflects that the applicant is specifically nominated in the FIR with a clear, categorical, and unambiguous role assigned to him. The minor victim's statement narrates, in explicit terms, that the applicant remained present throughout the incident and actively assisted, guarded, facilitated, and cooperated with co-accused Sher Khan and Waqar during the commission of the unnatural offence. The record further reveals that co-accused Sher Khan and Waqar not only committed the unnatural offence with the victim but also subjected him to severe mental and physical trauma. They sexually assaulted him and, in addition, co-accused Sher Khan captured photographs and recorded a video of the victim during the commission of the offence, extending threats of killing him should he disclose the incident to anyone. These allegations demonstrate the gravity of the offence and depict a coordinated act by all three persons involved, including the present applicant whose role was to guard the place, prevent the victim from raising alarm, and enable the co-accused to

complete the offence. Such conduct, prima facie, brings the applicant squarely within the ambit of common intention. It is a settled principle that sexual offences of this nature are generally committed in seclusion, and therefore, independent eyewitnesses are seldom available. In such circumstances, the courts rely upon the credible and confidence-inspiring statement of the victim. The medical evidence on record corroborates the victim's account of having been subjected to sexual assault and, thus, lends further prima facie support to the prosecution case. The contention regarding delay in the lodging of FIR is also without force. In cases involving rape or unnatural offences, delay is often explained by factors such as trauma, social stigma, familial hesitation and societal pressures. It is well established that such delay is not fatal to the prosecution, particularly when otherwise supported by cogent material. The defence argument that the applicant merely declined to commit the act himself does not, at this stage, absolve him of liability, as the specific role of aiding, assisting and guarding has been consistently alleged against him. At the bail stage, only tentative assessment is permissible. Prima facie, the applicant's presence and active participation cannot be discarded at this juncture. The grounds raised by the defence require a deeper appreciation of evidence, which is impermissible at this stage and shall be evaluated appropriately at trial. In similar circumstances, in the case of ***Mamaras v. The State and others (PLD 2009 SC 385)***, the Honourable Supreme Court of Pakistan observed that: *"We have considered the matter at some length and do not find it possible for us to take, an offence punishable under section 109, P.P.C., as lightly as the learned Advocate Supreme Court expects us to take. The said is a rather serious affair as the person abetting the commission of an offence is liable to the same punishment which is prescribed for person committing the same i.e. a sentence of death in the present case. Needless to add that in such-like cases, the law permits grant of bail only on satisfaction of the conditions laid down in subsection (2) of section 497 of the Cr.P.C: i.e. if there were reasonable grounds for believing that the person seeking bail was not guilty of the offence alleged against him and instead there were grounds warranting further inquiry into his guilt"*. Emphasis is supplied.

7. Based on the above tentative assessment, sufficient material is available on record connecting the applicant with the commission of the alleged offence. He is specifically nominated in the FIR, a clear facilitating role has been attributed to him, and both the medical and ocular accounts lend support to the prosecution's version. In these circumstances, the case of the applicant does not fall within the ambit of "further inquiry" as

contemplated under Section 497(2), Cr.P.C. Accordingly, the applicant is not entitled to the concession of bail.

8. For these reasons, the Criminal Bail Application filed on behalf of the Applicant, being bereft of merits, is hereby dismissed. The observations made herein are tentative in nature and confined to the disposal of this bail application, and shall not prejudice the trial court in assessing the evidence on merits. These are the detailed reasons for the short order dated 07-11-2025.

JUDGE

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