

# **THE HIGH COURT OF SINDH AT KARACHI**

## **Criminal Bail Application No.1525 of 2025**

Applicant : Tahir son of Muhammad Rafique  
through Mr. Muhammad Ilyas Tanoli,  
Advocate

The State : Through Mr. Zahoor Ahmed Shah,  
Additional Prosecutor General, Sindh

Date of Hearing : 05.11.2025

Date of Decision : 14.11.2025

## **ORDER**

**Jan Ali Junejo, J.-** Through the present Criminal Bail Application, the applicant/accused Tahir son of Muhammad Rafique, presently confined at Central Prison, Karachi, seeks his release on bail in FIR No.272 of 2024, registered under Sections 376/34 (as mentioned in the F.I.R.) read with Sections 371-A, 371-B, 512 and 109, P.P.C., as well as the Anti-Rape (Investigation and Trial) Act, 2021 (added through the charge sheet) at Police Station Gizri, Karachi-South. The applicant's earlier plea for bail was declined by the learned Additional Sessions Judge-III, Karachi-South, vide orders dated 21.11.2024, 10.01.2025, and 29.03.2025, primarily on the grounds that the alleged offence is of a heinous and non-compoundable nature, and that the no-objection affidavits filed by the complainant and her parents could not be accorded decisive weight at that stage. Being aggrieved by the said orders, the applicant has now approached this Court under Section 497, Cr.P.C.

2. The brief facts, as emerging from the record, are that the complainant Mst. Sonia daughter of Muhammad Akmal alleged that on 31.05.2024, while returning home from her workplace, she boarded a rickshaw being driven by the applicant, in which a woman was already seated. It is alleged that after being offered water by the said woman, she became unconscious and, upon regaining senses, found herself outside her home feeling unwell and suspecting that she had been subjected to sexual assault. Consequently, the FIR was lodged against the present applicant and an unknown woman. The investigation was conducted and challan submitted, whereafter the applicant was arrested and his plea for bail came to be rejected by the learned Trial Court, giving rise to the instant proceedings.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the case due to malice and misunderstanding. There was an unexplained delay of two days in lodging the FIR, and the statements of the victim under Sections 161 and 164 Cr.P.C. are inconsistent and contradictory, recorded after a delay of more than three months. The Medico Legal Certificate (MLC) does not indicate any signs of fresh sexual intercourse, nor were any injuries suggestive of sexual assault found. The DNA report reveals no semen stains or biological evidence connecting the accused with the alleged offence. The victim, her father, and mother have all filed affidavits before the learned Trial Court expressly stating that they have no objection to the grant of bail to the accused, and the victim has stated on oath that no wrongful act was committed by the applicant and that her earlier statements were recorded under police pressure. It is further argued that co-accused Habibullah have already been granted bail by the learned Trial Court, and that no incriminating evidence remains against the applicant. Lastly, the learned counsel prays for grant of bail.

4. Conversely, the learned Additional Prosecutor General, Sindh has opposed the grant of bail, contending that the offence alleged is heinous and non-compoundable, punishable with death or imprisonment for life. It was submitted that the affidavits of no objection filed by the complainant and her parents cannot wash away the gravity of the alleged offence and must be tested at trial. However, he did not controvert the fact that the MLC and DNA report do not support the allegation of rape, nor that no semen stains or corroborative forensic evidence was found. However, it is conceded that the victim and her parents have sworn affidavit raising no-objection on the grant of bail.

5. I have carefully examined the record with the degree of tentative assessment permissible at the bail stage and have given anxious consideration to the submissions advanced by the learned counsel for the applicant as well as the learned Additional Prosecutor General, Sindh. The record reveals that the FIR was lodged with a delay of two days without any plausible or satisfactory explanation, which prima facie casts doubt on the spontaneity of the prosecution version. The statements of the victim recorded under Sections 161 and 164 Cr.P.C. are found to be materially inconsistent and mutually contradictory in material particulars, thereby eroding the reliability of her subsequent account. Moreover, the statement of the victim under Section 164, Cr.P.C. was recorded, after a delay of more than three months from the date of the alleged

incident, for which no plausible explanation is available on record. The Medico Legal Officer's report specifically notes the absence of any signs of recent sexual intercourse or violence, and the DNA analysis further negates the presence of semen stains or any other biological material connecting the applicant with the alleged act of rape. It further transpires that the victim as well as her parents have voluntarily filed affidavits before this Court as well as the learned Trial Court expressly exonerating the applicant and declaring that they have no objection to his release on bail. The prosecution case lacks any direct or ocular evidence, and no independent witness has been cited to substantiate the allegation. The investigation stands concluded, the challan has been submitted, and the applicant is no longer required for investigative purposes. From a tentative appraisal of the available material, there appears to be no direct, medical, or forensic evidence linking the applicant with the commission of the alleged offence. The contradictory statements of the complainant, the absence of corroborative medical or scientific evidence, coupled with the retraction of the allegation through sworn affidavits, create serious doubt regarding the veracity of the prosecution case. Such circumstances bring the case squarely within the ambit of *further inquiry* as envisaged under Section 497(2), Cr.P.C., thereby entitling the applicant to the concession of bail at this stage. In similar circumstances, in the case of ***Haibat Khan v. The State and others (2016 SCMR 2176)***, the Honourable Supreme Court of Pakistan was pleased to grant bail to the accused in an offence under Section 376, P.P.C., taking into consideration the delay in lodging of the F.I.R., absence of any eye-witnesses to the incident, negative DNA report, and medical certificate showing no marks of violence, while observing that: *"After hearing the learned counsel for the petitioner, the learned Additional Prosecutor-General, Punjab appearing for the State and the complainant appearing in person and having gone through the record of investigation of this case with their assistance we have observed that the FIR in this case had been lodged with a delay of 14 days, the Medico-legal Certificate issued in respect of the alleged victim namely Naheed Bibi (aged about 10/11 years) did not depict any mark of violence on any part of her body, the Chemical Examiner had submitted his report in the negative in respect of the vaginal swabs of the alleged victim and the report of the D.N.A. test had been received in the negative. A perusal of the FIR shows that none of the eye-witnesses mentioned in the same had in fact witnessed the alleged rape himself and it was the minor victim herself who had disclosed to them that the petitioner had committed same highhandedness with her".* The underlining is supplied.

6. It is well settled that at the bail stage, deeper appreciation of evidence is not permissible, and if the case appears to be of further inquiry, the accused is entitled to bail as a matter of right. The Hon'ble Supreme Court has consistently held that where the prosecution evidence creates doubt about the guilt of the accused even at a tentative stage, and where forensic and medical reports do not support the prosecution version, bail ought not to be withheld as punishment prior to conviction.

7. In view of the foregoing discussion and the material available on record, it is evident that: the MLC and DNA reports do not support or corroborate the allegation of rape; there is an unexplained delay of two days in the registration of the F.I.R.; and an unexplained delay of more than three months in recording the victim's statement under Section 164, Cr.P.C. Furthermore, the victim and her parents have retracted the allegation and expressed no objection to the grant of bail. In these circumstances, the case falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C.

8. For the reasons delineated hereinabove, the applicant/accused Tahir son of Muhammad Rafique is admitted to bail subject to his furnishing a solvent surety in the sum of **Rs.100,000/- (Rupees One Hundred Thousand only)** and a P.R. bond in the like amount to the satisfaction of the learned trial Court. It is clarified that the observations made herein are tentative in nature, strictly confined to the disposal of this bail application, and shall not influence the trial Court in determining the case on merits.

**JUDGE**

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