# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-690 of 2025

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| Applicant | : | Aijaz Ali Shah s/o Lal Shah @ Hajan Shah<br>*Through* Syed Zafar Ali Shah, Advocate |
| Complainant | : | Mst. Zubeda Shaheen wd/o Ameer Bux, Mirani<br>*Through* Mr. Naveed Ahmed Channa, Advocate |
| The State | : | *Through* Mr. Shafi Muhammad Mahar, DPG |
| Date of Hearing | : | 26.12.2025 |
| Date of Order | : | 02.01.2026 |

## O R D E R

***KHALID HUSSAIN SHAHANI, J.*** — Applicant Aijaz Ali Shah, seeks post-arrest bail in a case bearing crime No.54/2025, for offences punishable under Sections 452, 337-J, and 376 PPC, registered at Police Station Newpind, Sukkur. The applicant's earlier bail plea was declined by the learned Additional Sessions Judge-II/GBVC (Designated), Sukkur, by order dated 23.07.2025.

2. As per prosecution's theory, complainant Mst. Zubeda Shaheen Mirani, a widow with five daughters and two sons, lodged the FIR on 05.06.2025 at about 1400 hours at Police Station Newpind, Sukkur. She states that her daughter Farzana had been ill prior to marriage, for whose treatment she had taken her to Civil Hospital Sukkur. During this period, the present applicant, Aijaz Shah, rendered assistance in the treatment of her daughter, which led to his frequent visits to her house.

3. According to the complainant, on 04.06.2025, both of her sons were away from home, and two of her daughters had gone with a married daughter residing near Gadani Phatak, Sukkur, leaving only her younger daughter, Shireen (aged about 12–13 years), and her friend Robina (aged about 8–9 years), a neighbor's child, in the house. The complainant left her house at about 11:30 a.m. for work, and on the way, the applicant met her and offered to drop her at her workplace, which he did.

4. After completing her work, the complainant returned home at night and found her daughter Shireen and Robina in a semi-unconscious condition. Soon thereafter, her brother Waqar and Robina's father, Bashir Ahmed Mirani, arrived at the house. After regaining consciousness, Shireen narrated that around 12:00 noon, the accused Aijaz Shah came to the house holding a shopper containing intoxicating sugarcane juice, which he gave her to drink. She consumed some of it and then gave the remainder to Robina, who also drank it; shortly thereafter, both girls fell into a semi-unconscious state; Shireen further alleged that, while she was in that condition, the accused removed her trousers and committed rape upon her. Upon hearing this, the complainant examined her daughter's clothes and found them in a soiled and spoiled condition, which prompted her to lodge the instant FIR.

5. Learned counsel for the applicant has vehemently contended that the applicant is innocent and has been falsely implicated in the case. He added, the prosecution witnesses are closely related to one another (the complainant, her brother, and Robina's father), which raises a strong suspicion of collusion and false implication of the applicant; there is an unexplained delay of about one day in the lodging of the FIR, which casts serious doubt on the spontaneity and credibility of the prosecution version; the chemical examiner's report is diametrically opposed to the oral allegations: no human semen was detected from the vaginal cotton swabs of either victim, and no intoxicant material was found in the blood samples of Shireen and Robina, thereby undermining the prosecution's theory that intoxicating sugarcane juice was administered to facilitate rape; the DNA report is negative, with no male sperm detected from the vaginal swabs or the last-worn clothes of the victims, which seriously weakens the charge under Section 376 PPC; the statements of the victims, Shireen and Robina,

recorded under Section 164 Cr.P.C, are inconsistent with the ocular account in the FIR: they do not specifically allege that the applicant committed zina-bil-jabr (rape) with Shireen, but only that he gave them intoxicating sugarcane juice which rendered them semi-unconscious. Shireen, in her 164 Cr.P.C. statement, merely states that in a semi-unconscious state she found the applicant doing "wrong" and removing her clothes, but does not clearly state that he actually committed forcible zina with her; in these circumstances, there is nothing on record that reasonably connects the applicant with the commission of the alleged offence, and the case, at this stage, calls for further inquiry rather than a conclusive finding of guilt; the applicant has been in custody since his arrest and is no longer required for further investigation; therefore, he is entitled to be enlarged on post-arrest bail under Section 497(2) Cr.P.C.In support of these contentions, learned counsel has placed reliance on 2024 SCMR 389, 2023 SCMR 1287, 2017 SCMR 366, and 2011 P.Cr.L.J. 990.

6. Conversely, the learned Deputy Prosecutor General, assisted by learned counsel for the complainant, has strongly opposed the grant of bail mainly contending that; the applicant is nominated in a heinous offence involving a specific rol, he administered intoxicating sugarcane juice to both victims and then committed sexual intercourse with the minor victim, Shireen; this ocular account is supported by medical evidence as the provisional medico-legal certificate records that the hymen of the victim Shireen was torn, which is consistent with the allegation of rape. He put stance that looking to the gravity of the offence and the specific role attributed to the applicant, he does not deserve any leniency at the bail stage, especially when the offence falls within the prohibitory ambit of Section 497 Cr.P.C. Learned counsel for the complainant has relied upon 2020 SCMR 2053, 2022 YLR Note 117, and 2017 P.Cr.L.J. 1642.

7. Having heard the learned counsel for the respective parties and having perused the material on record, including the FIR, medico-legal reports, chemical examiner's report, DNA report, and statements under Section 164 Cr.P.C., this Court has undertaken a tentative assessment of the case, keeping in view the well-settled principles governing the grant of post-arrest bail under Section 497 Cr.P.C.

8. It is a cardinal principle of law that at the bail stage, the Court is not required to conduct a deep or meticulous examination of the evidence, nor to decide the guilt or innocence of the accused conclusively. The question is whether there exist reasonable grounds to believe that the accused has committed the offence alleged, and whether the case, at this preliminary stage, falls within the purview of Section 497(2) Cr.P.C., i.e., whether it is a case that calls for further inquiry into the guilt of the accused.

9. Admittedly, there is a delay of about one day in the lodging of the FIR, which has not been satisfactorily explained by the prosecution. Delay in lodging an FIR, especially in a sensitive case like rape, is a factor that courts have consistently held to be relevant in assessing the credibility of the prosecution story and in determining whether the accused has been falsely implicated.

10. All the prosecution witnesses are closely related to one another (the complainant, her brother, and Robina's father), which raises a legitimate apprehension of collusion and false implication of the applicant. In such circumstances, the Court cannot lightly disregard the possibility that the applicant has been made a scapegoat.

11. The statements of the victims, Shireen and Robina, recorded under Section 164 Cr.P.C., are materially inconsistent with the ocular account in the FIR. While the FIR alleges that the applicant committed rape

with Shireen, in their 164 Cr.P.C statements the victims do not specifically allege that the applicant committed zina with Shireen. Shireen merely states that in a semi-unconscious state she found the applicant doing “wrong” and removing her clothes, but does not clearly state that he actually committed forcible zina with her. This inconsistency goes to the very root of the prosecution case and creates serious doubt about the veracity of the rape allegation.

12. The most significant factor in this case is the scientific evidence, which directly contradicts the prosecution’s theory:

- The chemical examiner’s report shows that no human semen was detected from the internal and external vaginal cotton swabs of either victim.
- The same report also indicates that no intoxicant material was detected in the blood samples of Shireen and Robina, thereby undermining the prosecution’s case that intoxicating sugarcane juice was administered to render them unconscious.
- The DNA report is negative, with no male sperm detected from the vaginal swabs or the last-worn clothes of the victims.

13. These scientific findings create a serious doubt as to whether the applicant was, in fact, responsible for the alleged rape and for the administration of intoxicants. While the provisional medico-legal certificate records that the hymen of Shireen was torn, in the face of negative semen and DNA reports, this finding cannot, at the bail stage, be treated as conclusive proof that the applicant committed rape. Tentatively, it cannot be ascertained that the torn hymen was caused by the applicant, especially when the scientific evidence fails to corroborate the prosecution’s version.

14. In light of the above, this Court is satisfied that the applicant has made out a case falling within the ambit of Section 497(2) Cr.P.C.. The existence of delay in FIR, the close relationship among prosecution witnesses, the inconsistency in the victims’ statements, and, most importantly, the contradictory scientific evidence, all point towards a case

that requires further inquiry into the guilt of the accused. The prosecution's case, at this stage, cannot be said to be so strong or conclusive as to justify the continued incarceration of the applicant.

15. For the reasons detailed above, the Court is of the view that the applicant, Aijaz Ali Shah, has successfully made out a case for further enquiry as envisaged under Section 497(2) Cr.P.C. Accordingly, applicant is admitted to bail, subject to his furnishing solvent surety in the sum of Rs. 300,000/– (Rupees Three Hundred Thousand Only), and a Personal Recognizance bond in the like amount, to the satisfaction of the learned Trial Court.

16. It is, however, expressly clarified that any observations made in this order are tentative in nature and shall not, in any manner, influence the learned Trial Court during the final adjudication of the case on its own merits.

**J U D G E**