

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No. S-865 of 2024

Date	Order with signature of Judge
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**Applicants:** 1) Muhammad Saffar S/o Muhammad Achar Khoso, R/o Village New Jatoi, Moro Naushero Feroze.  
2) Shakeel S/o Hadi Bux, Khoso, R/o Village Gulsher Khoso, Moro NausheroFeroze  
**Through** Mr. Ubedullah Malano, Advocate.

**The State:** **Through** Syed Sardar Ali Shah, Addl. Prosecutor General.

**Complainant:** Punhal Khan,  
**Through** Mr. Riaz Hussain Solangi, Advocate

**Date of hearing.** 14-04-2025.  
**Date of decision.** 14-04-2025.

ORDER

Ali Haider ‘Ada’,I;- Through this application, the applicants/accused seek pre-arrest bail in Crime No. 232 of 2024, registered at Police Station Abran, District Naushehro Feroze, for offences punishable under Sections 452, 365-B, 380, and 375-A PPC. The FIR was lodged by the complainant, Punhal Khan, on 24.06.2024. Prior to filing the present application, the applicants approached the learned Sessions Judge, Naushehro Feroze. Subsequently, the matter was transferred to the learned Additional Sessions Judge, Moro, who dismissed the pre-arrest bail application vide order dated 15.11.2024.

2. Brief facts of the prosecution case are that complainant narrated that his house is situated adjacent to the residence of his brother, Abdul Ghafoor, who works as a security guard in Karachi. On the night of 19.06.2024, after having dinner, the complainant and his family went to sleep, having secured the house by closing the entrances with hedges. The solar lights were switched on at that

time. On 20.06.2024, at approximately 0200 AM, the complainant and his family were awakened by a noise. In the light of the solar bulbs, they saw and identified four armed individuals with opened faces who had forcefully entered the house. The intruders were identified as accused Muhammad Ali, Mushtaque, Ali Mardan and Nawab as they pointed their weapons at the complainant and directed him to stay quiet. The family members also woke up during the incident. The accused Muhammad Ali and Mushtaque allegedly grabbed the complainant's niece, Mst. Nasreen D/o Abdul Ghafoor, by her arm and forcibly took her outside. The complainant and other family members raised cries, upon which their uncle Bahadur Khan, paternal cousin Waseem Khan, and several other co-villagers arrived at the scene. In the light of torches, they too identified the accused persons. However, the accused reportedly pointed their weapons at them, preventing any intervention, and then forcefully boarded Mst. Nasreen into a white-colored car. The complainant further averred that the accused kidnapped her and subjected her to forcible zina. Subsequently, it was discovered that the lock of the household trunk had been broken and golden ornaments were missing, shown as stolen by the same accused persons. In the morning, the complainant informed local elders (nek mards) about the incident. Initially, the accused gave false promises about returning Mst. Nasreen and the stolen items, but later outright refused. Thereafter, the complainant approached the Police Station and lodged an FIR regarding the incident.

3. The learned counsel for the applicants contended that the name of the present applicants does not transpired in the FIR. He further submitted that the alleged abductee/victim, Mst. Nasreen, voluntarily executed a free will affidavit on 26.04.2024, without any coercion or pressure. Based on that affidavit, Nikah was solemnized between her and co-accused Muhammad Ali on the same date. It was further submitted that the alleged victim, along with Muhammad Ali, filed Miscellaneous Application No. 2061 of 2024 before the learned Ist Additional Sessions Judge, which was decided on 04.07.2024. In that matter, protection was granted to the couple against private respondents, particularly the family members of Mst. Nasreen. The learned counsel also placed on record an application filed by accused Muhammad Ali, seeking protection from police harassment and averred that the family members of Mst. Nasreen had orchestrated raids on their houses. Additionally, attention of this Court is drawn

to page 69 of the record, where the alleged victim, along with co-accused Muhammad Ali, had filed a Constitutional Petition against her father before this Court, which resulted in an order Dated 08.07.2024, directing the police to provide protection and not to arrest anyone nominated in the FIR. It was further argued that the petition was disposed of on 01.08.2024 following the recording of the victim's statement under Section 164 Cr.P.C., wherein she retracted her earlier stance, claiming that her RTI was obtained forcibly and that she desired to return to her father, Abdul Ghafoor. The learned counsel emphasized that the names of the present applicants were only disclosed in the statement under Section 164 Cr.P.C. recorded on 27.07.2024, after a delay of more than one month. He further submitted that the medical report is silent with regard to the commission of rape and that the Medical Officer opined that the DNA results were negative. Further argued that the applicants have been falsely implicated due to malafide intentions and have a genuine apprehension of their arrest, therefore, confirmation of their interim pre-arrest bail is prayed sought. In support of his contentions, the learned counsel placed reliance upon the case of *Muhammad Zubair Rana v. The State and another* (2018 P.Cr.LJ 502) and *Muhammad Tufail v. The State and another* (2010 YLR 573).

4. Conversely, the learned counsel for the complainant and learned Additional Prosecutor General, vehemently opposed the confirmation of pre-arrest bail. It was argued that the applicants have been specifically implicated in the commission of rape in the victim's statement recorded under Section 164 Cr.P.C. It was further contended that the victim is a minor, aged 16 years, and thus, any purported consent is legally invalid. The alleged marriage and associated events were a fabricated attempt to shield the offence and create a misleading narrative. The learned counsel stressed that the statement of the victim under Section 164 Cr.P.C. carries substantial evidentiary value and is, by itself, sufficient to warrant reliance and justify the refusal of bail. In support of their arguments, the learned counsel placed reliance upon the case of *Abdul Razzak v. The State and another* (2022 P.Cr.LJ 953) and *Amanullah v. The State* (PLD 2009 Supreme Court 542).

5. Heard learned counsel for the parties and perused the material available on record.

6. Before scanning the case in tentative assessment I am fortified with the case of *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424), wherein the Honourable Supreme Court has observed that while granting pre-arrest bail, the merits of the case can be touch upon, so on such aspect the following paras be transcribed on such precedent.

7. It is not easy to out rightly disbelieve or discard the material placed on record in the form of the free will affidavit, Nikahnama and the initial approach of the alleged victim before this Court. Although the victim subsequently changed her version, it cannot be conclusively presumed at this stage that her earlier statements were made under coercion or undue pressure. If a person appears before a judicial forum, submits a statement of her own volition and later claims that the same was made due to fear or pressure, such conduct reflects a lack of faith in the judicial system. As, approaching a Court requires one to act freely and voluntarily, without external influence. The version advanced during judicial proceedings must be based on liberty and truth, free from coercion, undue influence, or external pressure and any subsequent retraction alleging fear casts doubt not only on the standing but also on the integrity of the process. In the present case, the alleged victim initially appeared before the Court lodged complaints against her family members, only to later retract the same, so, such contradictory conduct creates serious doubt and the claim that the earlier statement was made under pressure cannot, at this stage, be accepted at face value. It appears more as an attempt to shift positions or build a defence, rather than a genuine reflection of coercion. Therefore, the subsequent statement cannot be wholly relied upon at this stage without further corroboration. Furthermore, the alleged victim recorded her statement under Section 164 Cr.P.C. on 27.07.2024, with a considerable and unexplained delay of over one month. The record reflects that the same alleged victim had earlier appeared before this Court on 08.07.2024 to sign an affidavit in support of a Constitutional Petition seeking protection. This casts doubt on the claim made in her later statement under Section 164 Cr.P.C., wherein she alleged that she had taken advantage of an opportunity to use the restroom for toilet in order to escape. This version is clearly contradictory to the documentary record, which shows that she had proactively approached the learned Sessions Court, Sukkur by filing an application for protection and thereafter also moved a Constitutional

petition before this Court. Therefore, the belated statement recorded under Section 164 Cr.P.C., which materially contradicts her earlier conduct and affidavits, cannot be accepted in isolation. While it is a settled principle that the testimony of the victim may, in certain circumstances, be sufficient, it must still be scrutinized for consistency and corroborated with independent evidence where serious doubt arises. In the present case, the shifting stance of the alleged victim, absence of timely explanation for the delay and contradiction with documentary evidence diminish the reliability of the prosecution's version at this stage.

8. The medical evidence on record does not corroborate the allegations made by the alleged victim in her statement under Section 164 Cr.P.C., wherein she claimed to have been subjected to rape by the applicants. The medical examination report is completely silent on any signs of sexual assault or physical violence. No marks of violence were observed on the body of the alleged victim and the examining doctor has not recorded any definitive findings suggestive of rape. Moreover, the report issued by the Forensic Science Laboratory contradicts the version put forth by the prosecution, as the DNA results have returned negative. This medical evidence, being an impartial and objective source, does not support the allegation of rape as made in the statement under Section 164 Cr.P.C. In light of these observations, the medical and forensic record substantially weakens the prosecution's case and creates reasonable doubt at this stage.

9. In addition, the case law supporting the above contention further clarifies the legal position on this aspect. In the case of *Muhammad Ismail v. The State* (2024 MLD 1789), this Court held as follows:

*7. Since, the Nikkahnama produced by learned counsel for the complainant through statement dated 24.05.2024 reveals victim girl had not only signed it at the time of Nikkah before the Nikkah Registrar but she also put her RTI below the signature in presence of the witnesses mentioned in the Nikkahnama. This fact has not been denied by alleged abductee in her statement under Section 164 Cr.P.C nor she got dissolution of such Nikkah/marriage by filing any suit before the Court of law having jurisdiction. Hence, Nikkah between spouse i.e. the applicant and victim girl is still in existence and is intact. Therefore, in view of above factual-cum-legal position of record, case against applicant requires further probe.*

*8. Though the relatives of her family, who allegedly were accompanied with her at the time of her disappearance from Bazar, yet the complainant had got instant*

*case registered with a delay of one day without furnishing any plausible explanation. The delay so occasioned in lodgment of FIR shows it has been registered after due deliberation. The 164 Cr.P.C statement was recorded at belated stage, hence, it cannot be termed to be voluntarily rather it could be presumed to be under coercion. Since, there is documentary evidence which is yet to be adduced by the prosecution before the trial Court and the trial Court after recording evidence has to determine the accusation against the applicant in view of their previous relationship as husband and wife; hence, the contention so raised by learned counsel for the applicant that after joining hands of her family, victim appeared before the Magistrate and she under coercion, has stated contrary to the earlier view taken by her in affidavit as well as Nikahnama, carries weight. In the circumstances, question of her abduction is yet to be established by the prosecution. Since the alleged girl/abductee has given two versions and which one is correct version is yet to be determined by the trial Court after recording evidence of the prosecution. The offence with which applicant has been charged, carries maximum punishment up to seven years, thus does not exceed limits of prohibitory clause of section 497(1) Cr.P.C.*

*9. In the circumstances and in view of observation made under the case of Ghulam Abbas Abro (supra) and in view of dicta laid down by the Apex Court in case of Muhammad Tanveer v. The State (PLD 2017 SC 733), case against applicant requires further inquiry within meaning of subsection (2) to section 497 Cr.P.C. As far as, present application is concerned, since the applicant and daughter of the complainant are husband and wife and Nikahnama was solemnized/performed by them has not been dissolved, therefore, mala fide on the part of prosecution due to previous grudge over matrimonial affairs is in existence and shows malice on the part of prosecution. Therefore, basic ingredients for grant of pre-arrest bail, as has been laid down by the Honourable Supreme Court of Pakistan in case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427), are fully attracted in instant case, which entitled the applicant for grant of anticipatory bail. Consequently, instant bail application is hereby allowed; interim bail granted earlier to applicant Mohammad Ismail son of Muhammad Israr on 22.02.2024 is hereby confirmed on same terms and conditions.*

10. Further support is drawn from the case of **Muhammad Fayyaz v. The State and another (2013 YLR 370)**, wherein it was observed that:

*6. Admittedly the petitioner has placed on record a 'nikahnama' as well as copy of affidavit wherein the alleged abductee claimed to be sui juris being 19 years old and affirmed to have contracted marriage with the petitioner of her own free consent on 2-5-2011 and she further stated in the affidavit that no one has committed zina with her and she was not abducted by anyone. This affidavit was written on 5-5-2011. The record also contains a love letter written by the said Sumaira Bibi to the petitioner in which she invited him for*

*marriage. In spite of the allegations of zina the alleged victim was not willing to get herself medically examined which makes it a case of further inquiry. She has been taking different instances at different times. The F.I.R. was lodged with a delay of one month 26 days. This inordinate delay has not been satisfactorily explained in the F.I.R. The offence levelled against the petitioner was not compoundable so it is not believable that the complainant kept mum for such a long time merely on the request of the accused persons. Although the challan is stated to have been submitted but being at initial stage it is not likely to be concluded in the near future. It is a case of further inquiry. So keeping in view the facts and circumstances of the case the petitioner who is behind the bars for the last more than five months is admitted to bail in the sum of Rs.2,00,000 (Rupees two lac) with one surety in the like amount to the satisfaction of the trial Court.*

11. Further assistance is derived from the case of ***Ghulam Abbas Abro v. The State (2018 P. Cr. L J Note 168)***, wherein it was held that:

*8. It appears that alleged abductee has sworn her affidavit of free will before Justice of Peace at Karachi on 30.08.2017, wherein she has never contended that she is already wedded wife of one Asim Bashir even she had stated that neither she has been abducted, enticed away for any illegal intercourse but she, being adult, by exercising her right of free-will, has entered into Nikah with the applicant/accused Ghulam Abbas Abro, which is her right. She further stated that her parents were intending to marry her with an unknown stranger and she had never taken anything from her parents' house except apparels. As far as 164, Cr.P.C. statement of the alleged abductee is concerned, the same was recorded at belated stage viz. 25.10.2017, after execution of affidavit of free-will and after filing of Constitution Petition before Circuit Bench of this Court at Larkana and, therefore, contentions raised by the learned Counsel for the applicant/accused carries weight that when she went to appear the Court, she was taken away by her parents in collusion with local police and thereafter she, under coercion, has stated contrary to the view earlier taken by her in her affidavit as well as in her petition. The question of her abduction, in view of above circumstances, requires further probe and is to be thrashed out by the trial Court at the time of recording evidence.*

12. Finally, in the case of ***Salman Mushtaq and others v. The State through P.G. Punjab and another (2024 SCMR 14)***, the Honourable Supreme Court of Pakistan held that:

*6. The paramount factors which require consideration while granting pre-arrest bail are whether the arrest will cause humiliation and/or unwarranted persecution or harassment to the applicant for some ulterior motives; or that the prosecution is motivated by malice to perpetrate irreparable injury to the reputation and liberty of the accused. While considering the grounds agitated*

*for enlargement on bail, whether pre-arrest or post-arrest, the atrociousness, viciousness and/or gravity of the offence are not, by themselves, sufficient for the rejection of bail where the nature of the evidence produced in support of the indictment creates some doubt as to the veracity of the prosecution case. Therefore, where, on a tentative assessment, there is no reasonable ground to believe that the accused has committed the offence, and the prosecution case appears to require further inquiry, then in such circumstances the benefit of bail may not be withheld as a punishment to the accused. The Court must dwell on all interconnected rudiments, including the gravity of the offence and the degree of involvement of the applicant/ accused for bail in the commission of offence, together with the likelihood of absconding or repeating the offence and/or obstructing or hindering the course of justice, or any reasonable apprehension of extending threats to the complainant or witnesses or winning over the prosecution witnesses.*

*7. The doctrine of 'further inquiry' refers to a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. The expression "reasonable grounds" as contained under section 497, Cr.P.C., obligates the prosecution to unveil sufficient material or evidence to divulge that the accused has committed an offence falling within the prohibitory clause of section 497, Cr.P.C. However, for seeking the concession of bail, the accused person has to -show that the evidence collected against him during the investigation gives rise to clear-headed suspicions regarding his involvement. While deciding bail applications, it is the elementary duty of the courts to apply a judicious mind tentatively to reach a just and proper conclusion on whether reasonable grounds are made out to enlarge the accused on bail. The axiom 'reasonable grounds' connotes and associates those grounds that are legally acceptable and based on reasons that attract the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous. In the aforesaid situation, the possibility of mala fide intention in lodging the FIR cannot be ruled out, and, at this stage, there are no reasonable grounds for believing that the accused are involved; rather, there are sufficient grounds for further inquiry to prove the guilt of the accused persons.*

13. In view of the foregoing discussion and the material available on record, I am of the considered view that the applicants/accused have succeeded in making out a prima facie case for confirmation of pre-arrest bail. Furthermore, the case of the applicants/accused clearly falls within the ambit of further inquiry as envisaged under Section 497(2) Cr.P.C. Accordingly, the instant bail application is allowed. Consequently, the interim pre-arrest bail earlier granted to the applicants/accused vide order dated 21-11-2024 is hereby confirmed on the same terms and conditions.



14. It is, however, clarified that the observations made herein are purely tentative in nature and shall not, in any manner, prejudice or influence the learned trial court while deciding the case on its own merits in accordance with law.

Bail application stands disposed of accordingly.

***J U D G E***