

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
MIRPURKHAS.**

**Criminal Bail Application No.S-177 of 2024**

Applicants: Zulfiqar Ali and Mithoo Khan through Mr. Rao Faisal Ali, Advocate.

Respondent: The State through Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General, Sindh a/w I.O/SIP Mehnaz Awan SHO PS Women, Umerkot.

Complainant: Mst Parveen (present in person) through Mr. Nabi Bux Narejo, Advocate for complainant.

**Criminal Bail Application No.S-185 of 2024**

Applicant: Shrimati Seeta through Mr. Satram Sonani Bheel, Advocate.

Respondent: The State through Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General, Sindh a/w I.O/SIP Mehnaz Awan SHO PS Women, Umerkot.

Complainant: Mst Parveen (present in person) through Mr. Nabi Bux Narejo, Advocate for complainant.

Date of hearing: **04.08.2025**

Date of Order: **04.08.2025**

**O R D E R.**

**AMJAD ALI SAHITO, J:-** Through captioned bail applications, the applicants/accused above named seek their pre-arrest bail in Crime No.29 of 2024, under sections 376 506(ii), 338-B & 34 P.P.C, registered at P.S Samaro, District Umerkot, after their bail plea was declined by the learned Additional Sessions Judge-I Umerkot.

2. The details and particulars of the F.I.R. are already available in the bail application and F.I.R., same could be gathered from the copy of F.I.R. attached with such application, hence needs not to reproduce the same hereunder.

3. Learned counsel for the applicants/accused has contended that the applicants are innocent and have been falsely implicated in the instant case with mala fide intent. It is submitted that the FIR was lodged after an unexplained and inordinate delay of eight months, which casts serious doubt on the veracity of the allegations. It is further argued that the radiological report reveals no findings suggestive of an abortion, and the same is negative. Additionally, the report of the Special Medical Board does not indicate any evidence of abortion nor does it make any observation regarding the pregnancy of the alleged victim, baby Shaila. Learned counsel further submits that during the course of investigation, the prosecution witnesses were themselves declared accused under the provisions of the Child Marriage Restraint Act. It is further submitted that the alleged incident occurred on 10.08.2023, and assuming the ultrasound report to be positive, it would not have been medically possible to conduct an abortion after a period of six months. Learned counsel maintains that the complainant, due to prior enmity, has implicated the applicants/accused with ulterior motives, and as such, the applicants are entitled to the concession of pre-arrest bail. In support of his arguments, reliance has been placed on the judgment reported as *Muhammad Aslam v. The State* (2023 SCMR 397).

4. On the other hand, learned counsel for complainant argued that the victim was pregnant of 12 weeks according to the report of Karachi Computerized Laboratory, in which the Dr. Madan confirmed the pregnancy of the victim Baby Shaila; that after the incident Faisla was held in between the parties, which is available in prosecution's file; that I.O recorded the statement under section 161 Cr.P.C of the Molvi Hussain Bakhsh, who recited the Nikah, but said Molvi was died during investigation; that during the investigation complainant has nominated the accused persons in his 161 Cr.P.C statement. He further contends that the applicants/accused are not entitled for the extraordinary relief of pre-arrest bail and prayed for its dismissal. In support of his contention he has relied upon the case of *Usman Khan Vs. Mst Nasreen & two others* reported in 2011 MLD 1833 Sindh.

5. Learned D.P.G also supported the contentions of

the learned counsel for the complainant and he further argued that the victim is only aged about 15 years and according to ultrasound report she was pregnant and opposed for grant of bail. In support of his contention he has relied upon the case of Dur Muhammad Shah Vs. The State reported in 2002 P Cr. L J 1292 Lahore, Mujahid Khan Vs. The State reported in 2021 MLD 1683 Sindh and Majeed alias Machan Vs. The State reported in 2004 YLR 1294 Lahore,

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

7. The case of the Prosecution is that the daughter of the complainant/victim namely Mst. Shaila was ill and brought at the Hospital where Doctor has advised to her take the victim at Karachi Laboratory Kunri for ultrasound. On such advice of the doctor she appeared before laboratory for conducting ultrasound where the doctor informed to the complainant that her daughter is pregnant for 12 weeks. After hearing the incident the complainant inquired from her daughter Baby Shaila aged about 15 years informed her mother that in absence of her one of accused namely Mithoo Khan @ Dodo committed Zina with her on force of weapon issued threats that if she disclosed the facts the incident to anyone she will be killed. After hearing such version the complainant approached to the accused party so also Nekmards for Faisla and during Faisla father of accused namely Zulfiqar Ali undertakes that he will solemnize Nikkah with his son Mithoo Khan @ Dodo and such Nikkah was performed and after passage of one month daughter of the complainant baby Shaila returned back to her mother and disclosed that accused Mithoo Khan @ Dodo forcibly took her at Hospital where abortion was conducted and thereafter he pronounced Talak to her.

8. After registration of FIR, the Investigation was conducted under Anti Rape (Investigation & Trial), Act 2021 wherein SIP Mehnaz Awan conducted the investigation and produced the victim baby Shaila before

the learned Magistrate for recording of her statement under section 164 Cr.P.C wherein she fully implicated the accused Mithoo Khan @ Dodo for committing Rape with her. So far as the plea raised by the learned counsel for the applicants that the ocular evidence did not find support from the medical evidence on the ground that the Board was constituted and as per Board's findings nothing was suggested about the pregnancy and abortion of Baby Shaila at the belated stage. It is important to note here that on 10.08.2023 alleged incident took place and Board was constituted on 13.06.2024 whereas the abortion was held on 04.04.2024, as such, the Medical Board was not in a position to give any proper observation. The investigation Officer present in Court stated that she has recorded the statement of Molvi Hussain Bakhsh under section 161 Cr.P.C where he stated that he has solemnized the Nikah of accused Mithoo Khan @ Dodo with Baby Shaila. She also recorded the statement of the witnesses of the Nikkah who also supported the version of the Molvi Hussain Bakhsh. In above position it is clear that Nikkah was performed by accused Mithoo Khan @ Dodo with the victim, but subsequently he forcibly brought the victim at Hospital where abortion was conducted thereafter he given Talak/divorce.

9. The offence with which the applicants stand charged fall within the prohibitory clause of Section 497 Cr.P.C Furthermore, no ill-will or malafide is alleged against the complainant party by the applicants even otherwise they have shown in F.I.R with specific role. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakis [2019 S CMR 1129] wherein the Hon'ble Supreme Court of Pakistan has held as under:

*"Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run*

*of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law."*

10. At bail stage, only tentative assessment is to be made. Sufficient material is available on the record to connect the applicant Mithoo Khan with the commission of alleged offence. The version of the complainant was supported by the victim Baby Shaila that the accused Mithoo Khan @ Dodo had committed Rape with her. From the contents of the FIR, it is apparent that the alleged offence is of a heinous nature where the accused/applicant Mithoo Khan committed Zina-bil-Jabbar.

11. The learned counsel for the applicants has failed to establish the case to the extent of accused Mithoo Khan warranting the confirmation of interim pre-arrest bail. Accordingly, the interim bail already granted to the applicant/accused Mithoo Khan @ Dodo is hereby **dismissed**. The interim bail granted to the applicants vide order dated **02.08.2024** is hereby **recalled**.

12. The role assigned against co-accused Zulfiqar Ali was only that he is father of main accused Mithoo Khan. Otherwise he has not committed Zina with the victim. The role assigned against accused Mst Shrimati Seeta that she has got abortion of the victim, where the applicant denied such facts and stated that she is only a nurse. In view of above position the interim bail of the applicants/accused Zulfiqar Ali and Shrimati Seeta is hereby confirmed on same terms and condition.

13. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE