

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail App. No. S – 445 of 2024**

**(Ghulam Baqir v The State)**

Date of hearing	Order with signature of Judge
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**Hearing of bail application**

1. For orders on office objections at Flag-A
2. For hearing of bail application

**Date of hearing and Order:- 02.08.2024**

Mr. Ahmed Mehran Goraya, Advocate for applicant.  
Mr. Akhtar Hussain Laghari, Advocate for complainant.  
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

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**ORDER**

**Adnan-ul-Karim Memon J** Applicant Ghulam Baqir is seeking post-arrest bail under Section 497, Cr.P.C. in Crime No.85 of 2024, for offences under Sections 377, 337-J, 342, 34, PPC, registered at Police Station Mirwah, District Khairpur. His earlier bail plea has been declined by the trial Court vide order dated 28.06.2024 on the ground that his name is appearing in the FIR with serious allegations that he has committed an unnatural offense with the victim Ali Abbas.

2. The learned counsel for the applicant has submitted that the opinion of the doctor is final and in the present case, he has opined that no act of sodomy was committed further DNA report is silent, such circumstances require further inquiry. He prayed for allowing the bail application.

3. The learned Deputy Prosecutor General assisted by the learned counsel for the complainant has opposed the bail application on the ground that the applicant is nominated in the FIR with the allegation of unnatural offense with Ali Abbas (victim). PWs have supported the case and the offense carries a punishment of life imprisonment thus is a heinous one and falls within the prohibitory clause of Section 497 (1) Cr.P.C. He supported the impugned order passed by the learned trial Court, whereby the bail plea of the applicant was declined.

4. I have heard the learned Counsel for the parties present in Court and perused the record with their assistance

5. The prosecution story is that the alleged offense occurred on 15.05.2024 and the same was reported to the police on 16.05.2024, however, the victim appeared before the MedicoLegal Officer who opined as under:-

### **Injuries:-**

*“No any injury in Mark of violence present at any part of the body at the time of examination.*

*PERI-ANAL Examination: Separation of Buttorcks; painful. PERI-ANAL HAIRS: Not present Injuries on PERI-ANAL Region: No injury was seen at the time of examination. PERI-ANAL- Regoseosities: Not present., ANAL Tone: Normal. ANAL. ORIFICE Normal, TEARS on ANAL ORIFICE: No Fissure or FISTULA Seen.”*

6. DNA report suggests that the three ANAL Swab Samples and clothes of victim Ali Abbas (Item 1.0 and Item 2.0 do not contain any semen stain/sperm fraction.

7. Prima facie in the absence of Medical and DNA report, the case against the applicant requires further inquiry as Article 164 of Qanoon-e-Shahadat, explicitly provides modern devices to be used and such rape and sodomy case which factum is missing in the present case, therefore the insertion of Section 377, 337-J, 342, and 34 PPC is yet to be ascertained whether attracted or otherwise which is only possible if the complainant and Medico-Legal Officer is examined within one month by the trial Court without fail.

8. It is a settled principle of law that the bail plea is to be decided based on material available on record tentatively and the deeper appreciation of evidence is not permissible under the law. However, the allegations against the applicant are serious and there could be no redemption or compensation for the victim because he would have to live with the worst scars that one could imagine. However, as per the version, during the investigation medical examination of the victim Ali Abbas was conducted but such a report is negative even though a DNA report is negative, therefore, when the exact language of the definition of the offense is placed in juxtaposition, a ground of further inquiry in terms of sub-clause 2 of section 497 Cr.P.C. is made out. Prima facie the allegations of unnatural offense, in the absence of Medical and DNA evidence, no concrete opinion at this stage can be formed as it is yet to be ascertained whether such offense occurred or otherwise which is only possible if the Medico-Legal Officer is examined by the trial Court.

10. Keeping in view the above position the applicant has made out his case for a grant of post-arrest bail.

11. For the aforesaid reasons, this criminal bail application filed by applicant Ghulam Baqir under Section 497, Cr.P.C. in Crime No.85 of 2024, for offenses under Sections 377, 337-J, 342, 34, PPC, registered at Police Station Mirwah, District Khairpur is **allowed**, and the applicant is admitted to post-arrest bail in

the aforesaid crime subject to his furnishing solvent surety in the sum of Rs.1,00,000/- (Rupees One hundred thousand only) and PR bond in the like amount to the satisfaction of the trial Court.

12. The observation recorded hereinabove is tentative which shall not prejudice the case of either party.

13. These are the reasons for my short order dated 02.08.2024, whereby the applicant was granted post-arrest bail in the subject crime.

J U D G E

Abdul Basit