

## IN THE HIGH COURT OF SINDH, KARACHI

### **Criminal Bail Application No. 898 of 2024 & Criminal Bail Application No. 1562 of 2024**

<i>Date</i>	<i>Order with signature of Judge</i>
<b>Applicant</b> Shoaib Hassan son of Akhtar Nawaz in Cr. B.A No.1562 of 2024	: through Mr. Aamir Mansoob Qureshi, Advocate
<b>Applicant</b> Aashar @ Shani son of Manees Nawaz in Cr. B.A No.898 of 2024	: through Mr. Muneer Ahmed Gilal, Advocate
<b>The State</b>	: through Ms. Seema Zaidi, Addl. Prosecutor General, Sindh
<b>Complainant</b> Jameel Ahmed Malik son of Muhammad Ismail Malik.	: in person
<b>Date of Hearing</b>	: 22.08.2024
<b>Date of Order</b>	: 25.09.2024
<b>Date of Announcement</b>	: 27.09.2024

### **ORDER**

**Muhammad Saleem Jessar, J:-** Vide FIR No.50 of 2024 registered with P.S Bilal Colony, Karachi, for the offence punishable to Sections 377, 109 & 34 PPC, applicants Shoaib Hassan (in Criminal Bail Application No.1562 of 2024 and Aashar @ Shani (in Criminal Bail Application No.898 of 2024) stand nominated therein with a specific role of committing unnatural offence with a teenager namely Azhan Siddiqui son of Zafar Siddiqui, aged about 12 years as well as facilitating the co-accused in commission of the offence. Consequent upon said FIR, applicants were arrested by the police

on 03.02.2024. After completion of legal formalities, challan / charge sheet against them was filed, which is now pending for trial before the Court of 2<sup>nd</sup> Addl. Sessions Judge, Karachi-Central (trial Court) vide Sessions Case No.797 of 2024 (re-the State Versus Shoaib Hassan and another). The applicants preferred such their plea(s) in terms of Section 497 Cr.P.C before the trial Court, which after due notice and hearing the parties, were declined by way of orders dated 09.04.2024 and 04.07.2024 respectively. Hence, the applicants have approached to this Court by maintain these bail applications.

2. Complainant Jameel Ahmed is the maternal uncle of the victim boy, who after commission of the offence, narrated facts of incident to him on 02.02.2024 at 2315 hours; whereas, he got registered instant case against accused on 03.02.2024 at 0130 hours i.e. with a delay of about 02 hours and 45 minutes, whereby he alleged that accused Shoaib Hassan has committed an unnatural offence with his nephew Azhan Siddiqui while he was playing with his friends namely Aarsal and Atif; whereas, co-accused Aashar @ Shani was watching at the outer door outside the Flat No.422, Mateen Heaven (a Building). To such effect, present FIR was lodged.

3. Learned counsel for applicant Shaoib Hassan, while rebutting contents of the FIR, argued that no mark of injury or violence was found on the person of victim and the clothes worn by the boy were not changed. Next submitted that blood samples of the applicant were kept at P.S for four days and later it were sent to Forensic, DNA Surgical Laboratory, Karachi University on 06.02.2024. Next submitted that 164 Cr.P.C statement of the victim was recorded on 07.02.2024 in presence of the applicant and co-accused; besides, I.O had submitted interim challan but the Magistrate concerned has taken cognizance on 03.05.2024 for the sections applied under the FIR and submitted the case papers to the Court of Sessions being Court of ultimate trial. The place of incident, as shown, is in possession of one Muhammad Moonis Alam, a tenant and said person has not been examined by the I.O during investigation. He further submitted that DNA of sperm fractions is yet to be established by the prosecution after recording its evidence. In his last, learned counsel submitted that DNA profile shows mixture of at least two individuals (he referred to page-93 of the Court file),

as such ratio of the interaction indicates that there was partial match between DNA in the sperm sample and blood sample; hence, it cannot override medico legal report. He, therefore, submitted that all the allegations are baseless which are yet to be considered after recording evidence of the prosecution witnesses; hence, until prosecution may succeed to prove its charge against accused, case against applicant requires further inquiry and prayed for grant of bail. In support of his contentions, learned counsel placed reliance upon the cases of *ABDUL GHAFFAR Versus The STATE and others* (2016 SCMR 1523), *SOHAIL AKHTAR Versus The STATE through P.G. Punjab and another* (2022 SCMR 1447) and *SAGHIR AHMED Versus The STATE and others* (2023 SCMR 241).

4. Learned counsel for applicant Aashar @ Shani argued that the role against accused is only of standing outside the flat for watching purpose and no specific role of committing sodomy with victim boy has been alleged, therefore, case against him requires further inquiry. In support of his contention, learned counsel placed reliance upon the cases of *SHAHID Versus THE STATE* (1994 SCMR 393), *GHULAM SHABBIR Versus THE STATE* (1988 P.Cr.L.J 557) and *SARWAR KHAN Versus THE STATE* (2002 YLR 64).

5. On the other hand, complainant Jameel Ahmed Malik was present in person and submitted that he had no means to engage a private counsel on his behalf; however, had shown his trust upon Addl. P.G, Sindh. He; however, opposed the bail application by submitting that relatives of the accused are issuing threats to face dire consequences.

6. Learned Addl. P.G, Sindh appearing for the State, vehemently opposed the bail application on the ground that FIR was lodged very promptly with specific name(s) of the accused as well as role they had played; hence, question of mistaken identity or false implication of the accused, does not arise. She further added that arguments and the plea advanced by learned counsel for the applicant(s) tantamounts to deeper appreciation of the evidence which has not been permitted by the superior Courts. She further submitted that no ill-will or any animosity has been brought on record through which it could be deduced that applicant has

been implicated in this case by the complainant for malafide intentions or some ulterior motives.

7. As far as, case of co-accused Aashar @ Shani is concerned, learned Addl. P.G, Sindh also opposed his bail application on the ground that he was facilitator; besides, medical evidence shows sperm of two individuals, therefore, possibility of co-accused to have had committed sodomy with victim, cannot be ruled out; besides, he had played a role of facilitating while watching and standing outside the flat, therefore, he is also equally responsible and is liable to be prosecuted vicariously; hence, he is not entitled for the bail. In support of her contention, learned Addl. P.G placed reliance upon the cases of *ZAHID and another Versus The STATE (2020 SCMR 590)*, *ZAHID Versus The STATE (2022 SCMR 50)* and *Zahid & Riaz Ali Versus The State (SBLR 2020 SC 77)*.

8. **Heard arguments, record perused.** Admittedly, both accused have been nominated in a promptly lodged FIR with specific role and no ill-will or animosity has been brought on record to believe that the victim or his elders had any previous transaction or the connection on which basis accused have been roped-in in this case rather; on the contrary, both accused have not denied their presence except their mere denial of the offence. The prosecution has collected sufficient material including circumstantial evidence which has been corroborated by the medical evidence, therefore, there is no inconsistency between ocular version and the medical version. In absence of any malafide or enmity, the evidence collected by the prosecution which is inspiring confidence, cannot be deprecated or brushed aside mere on the basis of assumptions put-forth by the defense. The offence with which accused have been charged, carries maximum punishment, thus falls under the purview of prohibitory clause of section 497(i) Cr.P.C. The PWs as well as victim in their respective 161 as well as 164 Cr.P.C statements, have categorically implicated the accused with their specific role; hence, their testimony particularly at this juncture, is sufficient to hold that the prosecution has successfully made out a case against them. It is well settled principle of law that even lack of DNA report was not sufficient to secure acquittal particularly when there was

substantial corroboratory evidence made available by the prosecution on record beyond reasonable doubt.

9. The upshot of above discussion is that applicants have been failed to make out a good prima facie case for their release in terms of further inquiry. On the other hand, the prosecution has collected sufficient evidence against both the accused which is enough to maintain conviction against them. Consequently, both these Criminal Bail Applications bearing No. 1562 and 898 of 2024, being devoid of merits, are hereby **dismissed**.

10. Since, the case has been challaned, therefore, the trial Court is expected to expedite the trial and ensure its early conclusion with compliance report to this Court through MIT-II.

11. Office to place a signed copy of this order in the connected bail application.

***JUDGE***

Zulfiqar/P.A