

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

Bail Application No.S-207 of 2024  
(*Muhammad Islam Vs. The State*)

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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Date of hearing & Order 25.09.2024

Mr. Suneel Kumar, advocate a/w applicant  
Mr. Muhammad Sharif Asif Misrani, advocate a/w complainant  
Mr. Shahzado Saleem, Additional P.G Sindh a/w Investigating  
Officer

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**ORDER**

*Adnan-ul-Karim Memon, J.*      The applicant Muhammad Islam is seeking pre-arrest bail in F.I.R No.68 of 2024 for the offense under section 377, 324, 34 PPC at Police Station Perumal.

2.      The learned trial Court declined his earlier bail plea vide order dated 27.08.2024 on the premise that the applicant is nominated in the FIR for making firing at the spot to rescue the prime accused from the clutches of the complainant party, which actively demonstrate sharing his common intention in the alleged offense, that medical evidence suggests the violence on the anal of victim, that the witnesses including the victim in their statements under section 161 Cr. P.C have fully implicated the applicant; that applicant is vicariously liable for the alleged offenses.

3.      Learned counsel for the applicant/accused argued that FIR was lodged with a delay of two days without any plausible explanation; that no active and effective role is assigned to the applicant and there are allegations of ineffective firing; that the applicant has no role in the main offense of sexual assault upon the minor victim Fizza aged about 07 years; that applicant was implicated with malafide and ulterior motive by the complainant over political indifferences; that heinousness of offense is not a ground to withhold bail; he further submitted that the name of applicant has been placed in column No.II of the charge sheet by the Investigating Officer; as such, no fruitful result will come out, if the applicant is sent behind the bars. He prayed for confirmation of bail already granted to the applicant.

4. The learned Additional Prosecutor General assisted by the counsel for the complainant opposed the grant of bail to the applicant on the premise that the applicant is actively nominated in the subject crime for making gunshots upon eyewitnesses to get release prime accused Adnan, who was caught red-handed at the spot, which suggest common intention and vicarious liability of applicant in the main offense of sexual assault upon the minor victim; that the medical evidence suggests the mark of violence on the anal of victim, which rules out all hypothesis and possibilities of fabrication and deliberation on the part of complainant; that the alleged offenses fall within the ambit of restrictive clause of section 497(1) Cr.P.C; that the plea of alibi is afterthought as Investigating Officer was bent upon to protect the applicant on his false plea of alibi, that he was not available at the place of incident, this shows that Investigating Officer has favored the applicant/accused; therefore, no extraordinary circumstances have been shown to admit the applicant on pre-arrest bail in terms of section 498 Cr.P.C. He prayed for the dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. By all means, the applicant has to satisfy the Court regarding the basic conditions enumerated under section 498 Cr.P.C, as no specific details of mala fide are shown on the part of the complainant and victim to book the applicant in the alleged case of sexual assault on the minor victim aged about 07 years. On the subject law point, the Supreme Court is clear and held in the case of Rana Abdul Khalique Vs. The State [2019 SCMR 1129] that the accused seeking judicial protection is required to reasonably demonstrate that his/her intended arrest was/is calculated to humiliate him/her with taints of malafide. So far, the delay in registration of FIR is concerned, the same is of no help to the applicant at this stage as it has been repeatedly held by the Supreme Court that in such cases of sexual assault, the delay in lodging the FIR is immaterial. Prima facie, there was no previous enmity between the parties to claim malafide on the part of complainant to book the applicant in the crime. Besides, the medical as well as ocular testimony supports the case of the complainant and/or victim; that sexual assault was done to her by the main accused who attempted to be rescued by the present applicant by making ineffective

firing to deter the complainant from grabbing the main accused; however, he could not succeed, but obtained protection of this Court vide order dated 29-08-2024; thus I am not inclined to endorse the viewpoint of the applicant at this stage for the simple reason that bail before the arrest is meant to protect innocent citizens who have been involved in heinous offenses with malafide and ulterior motives; however, in the present case, no such ground exists in favor of applicant to show that there was malafide intention or ulterior motive on the part of complainant/victim to book the applicant in the serious sexual assault case. Additionally, the plea of *Alibi* as taken by him is of no help to him and the same stance cannot be considered as a valid ground of bail before arrest in a sexual assault case of the minor girl, aged about 07 years.

7. The charge under section 377 P.P.C. was converted to one under section 377-A punishable under section 377-B P.P.C. To facilitate reference the two sections are reproduced below:

377-A. Sexual abuse. Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

377-B. Punishment. Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which [shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees].

8. The trial court has tentatively assessed that the acts alleged by the 7-year-old victim fall within the definition of sexual abuse under Section 377-A of the Pakistan Penal Code (PPC). This is supported by the victim's statement to the doctor and her recorded statement under Section 161 of the Criminal Procedure Code (Cr.P.C.). Given the victim's age and the serious nature of the allegations, this court has decided to deny pre-arrest bail to the applicant at this stage for the reason that the severe punishment for offenses under Section 377-A (minimum 14 years, maximum 20 years imprisonment, and a fine) makes it a non-bailable offense. This is to ensure the safety of victim child and to prevent potential risks or obstruction of justice by the applicant/accused. In the present case, the allegations against the applicant to facilitate the main accused to flee away from the scene, who was caught red-handed at the spot and as such, the role of the applicant *prima facie* falls within the aforesaid ambit subject to final

determination by the trial Court after recording the evidence of the victim/complainant. So far as, the role of Investigating Officer is concerned, the IGP Sindh shall look into the conduct of the Investigating Officer and pass appropriate directions under disciplinary rules; after hearing him in accordance with law.

9. Without prejudice to the merits of the case, which is pending adjudication before the trial Court, I am of the tentative view that in the absence of malafide and ill will of the complainant for his false involvement in this case, the applicant has failed to make out his case for confirmation of pre-arrest bail; and interim bail already granted to him vide order dated 29.08.2024 is hereby recalled and bail application in hand stands dismissed. The applicant is required to surrender before the Investigation Officer who is present in Court and seeks his custody to produce him to face the trial.

10. The observation is tentative shall not prejudice the trial court. The trial court is directed to examine the victim/ complainant within two months and if the charge is not framed the same shall be framed on the date so fixed by the trial court. However it is made clear that the trial court shall comply the direction in case of failure the matter shall be referred to MIT-II of this court for referring the matter to the competent authority for appropriate order on administrative side.

11. These are the reasons of short order dated 25.09.2024 whereby the bail application of the applicant was dismissed.

**JUDGE**