

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No.2243 of 2024

Date: Order with signature(s) of the Judge(s)

- For hearing of bail application

24.02. 2025

Mr. Saindad, Advocate for Applicant
Mr. Mumtaz Ali Shah, APG for State
Mr. M. Moosa Khokhar, Advocate for the Complainant

Jan Ali Junejo, J.-- The present Criminal Bail Application has been filed on behalf of the Applicant/ Accused, who is seeking post-arrest bail in connection with a case stemming from FIR No. 285 of 2024, registered at P.S. Sukhan, Malir, Karachi, under Section 377 read with Section 377-B, P.P.C. The Applicant/Accused initially approached the learned Sessions Court by filing Bail Application No. 2876 of 2024, which was subsequently dismissed by the Court of the learned IIIrd Additional Sessions Judge, Malir, Karachi, vide Order dated 15.06.2024.

2. The facts relevant to the present criminal bail application are as follows:

“The complainant, Ahmed son of Muhammad Fageer, reported in an FIR on 06-05-2024 at 02:20 hours that his son, Abdullah, was sexually assaulted. According to the complaint, on 05.05.2024 at 09:30 PM, Abdullah was returning home from a clinic when two individuals, one identified as Ghazi, forcibly took him to a vacant plot and committed sodomy, along with issuing threats. Ahmed's wife informed him of the incident when he returned from work. He seeks legal action against the accused”.

3. The learned counsel for the applicant/accused argued for **post-arrest bail** on the ground that the **complainant raised no**

objection to the bail before both the **trial Court** and this **Court**. The counsel contended that the complainant's lack of opposition weakens the prosecution's case and supports the applicant's release on bail. Thus, it is **prayed that the Hon'ble Court may be pleased to grant bail** to the accused in the interest of justice.

4. The learned Additional Prosecutor General has argued that a *prima facie* case is clearly established against the Applicant/accused. The learned Additional Prosecutor General argued for the dismissal of the bail application, contending that the applicant/accused has been explicitly nominated in the FIR with a specific role of committing unnatural offence against the victim. It was further submitted that the Complainant is not empowered to raise no-objection on behalf of the minor victim, nor the offence is compoundable. Given these circumstances, the accused is not entitled to bail, as no exceptional grounds exist to warrant any leniency.

5. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused as well as the learned Additional Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Upon a thorough perusal of the record, it transpires that the complainant and victim appeared before the Court and submitted their affidavits of no objection, stating that they have no objection to bail being granted. However, the filing of such an affidavit holds no legal validity, as the offence in question is non-compoundable, and no such procedure exists in law. Moreover, the victim, in his statement recorded under Section 161 Cr.P.C., has affirmed the contents of the FIR, which are further substantiated by the medical report confirming the assault. Additionally, the medical examination of the accused, Ghazi Khan, confirms that he was

physically capable of committing the act. The allegations against the accused are grave, heinous, and brutal, with significant social and psychological ramifications. The prima facie evidence on record strongly implicates the accused, bringing the case within the prohibitory clause. Furthermore, the offence also falls under Section 377-B PPC for sexual assault, in addition to the provisions of Section 377 PPC. In the given circumstances, there remains a substantial risk of evidence tampering if the accused is released on bail. Under similar circumstances, in the case of ***Wajid v. The State* (2023 YLR Note 60)**, this Court ruled that: *“Admittedly the name of the applicant/accused transpired in the FIR with specific role as the applicant/accused Wajid with the help of his brother Khadim was found committing sodomy with minor boy Abdul Salam aged about 14 years, who was found bleeding from rectum. The witnesses have supported the case and medical evidence supports the prosecution version so also circumstantial evidence collected in shape of blood stained clothes of victim. The FIR has been lodged promptly. The P.Ws. Khamiso Khan and Muhammad Yaqoob in their 161, Cr.P.C. statements have fully supported the version of complainant and the medical evidence also corroborates the version of complainant. I.O. has collected the blood stained clothes, who also prepared mashirnama of blood stained clothes of victim and clothes of accused, mashirnama of place of vardhat, mashirnama of arrest. Victim has also been admitted in hospital for checkup and during the checkup doctor found that the blood was oozing and victim feeling pain, tear was present over anal examination, anus was partly closed”*. It was further held that: *“The offence for which applicant is allegedly involved is a heinous offence against society and is increasing day by day in our country. The punishment for section 377-B, P.P.C is not less than 14 years and the same may be extended upto to 20 years and with fine not less than one million as such offence falls within the prohibitory clause of section 497, Cr.P.C.”* With respect to the complainant's affidavit of no-objection in a non-compoundable offense, the Honourable Apex Court, in the case of ***Naseer Ahmed v. The State* (PLD 1997 Supreme Court 347)**, held

that: *“A trend has developed nowadays that eye-witnesses sometimes take a somersault and give statements which are different from prosecution case and sometime file affidavit also at the stage of hearing of bail application of accused persons with intention of creating doubt in the case of prosecution to enable the accused to get bail. The Courts have to be careful in such cases and see that bail applications are disposed of strictly according to law on merits keeping in view the distinction between the tentative assessment and actual evaluation of evidence by the trial Court. It is the mind of the Court which is to be satisfied whereabouts turn of some of eye-witnesses in the manner stated above shakes up the whole prosecution case from the point of view of credibility of the remaining material. In that respect each case is to be decided on its own merits”*. The underlining is supplied.

6. The applicant/accused has not demonstrated any personal enmity with the complainant/victim, and no mala fide intent on the part of the prosecution has been established. Consequently, it stands prima facie established that the applicant/accused is directly involved in the commission of the offence, as such, does not merit the concession of bail.

7. In view of the aforementioned reasons, the present bail application filed on behalf of the applicant/accused, being devoid of substantive merit, is hereby dismissed. The observations made herein are confined solely to the adjudication of this bail application and shall not prejudice the rights of either party at the trial stage.

JUDGE