

# THE HIGH COURT OF SINDH AT KARACHI

## CrI. Bail Application No. 2515 of 2024

Applicant : Arsalan Khan  
through Mr. Rashid Hussain,  
advocate a/w applicant

Respondent : The State  
through Mr. Mumtaz Ali Shah  
Assistant Prosecutor General  
a/w P.I. Ghazala PS Jackson

Complainant : Niaz Muhammad  
through Mr. Dr. Syed Waseem  
Raza, advocate

Date of hearing : 5<sup>th</sup> March, 2025

Date of Order : 5<sup>th</sup> March, 2025

### ORDER

**Jan Ali Junejo, J.--** The present Criminal Bail Application has been filed on behalf of the Applicant/Accused, who is seeking pre-arrest bail in connection with a case stemming from FIR No.340 of 2024, registered at P.S. Jackson, Karachi, under Sections 377/511, of Pakistan Penal Code (P.P.C.) The Applicant/Accused initially approached the learned Sessions Court by filing Bail before arrest Application No.5091 of 2024, which was subsequently dismissed by the Court of the learned Xth Additional Sessions Judge, Karachi-West, vide Order dated 28-10-2024. The Applicant/accused was granted ad-interim pre-arrest bail by this Court vide Order dated: 30.10.2024.

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

*“The First Information Report (FIR) details the complaint lodged by Niaz Muhammad, a Pakistan Navy employee residing at the provided address, who reported that on 20.10.2024 at 7:00 PM, his 16-year-old son Zain-ul-Abideen and 15-year-old Khubaib Khalid were coerced by accused Arslan (a local resident) to accompany him to his office near Traffic Police Office, Family Quarters, Keamari, Karachi, under the pretext of retrieving documents. Upon arrival, Arslan allegedly locked the door, brandished a pistol, forced the minors to undress, and photographed/recorded them. He then demanded they engage in sexual acts with each other, threatening to assault them further and claiming prior sexual abuse of Khubaib. When the boys resisted, Arslan assaulted Zain, but they managed to escape, retrieve their clothes, and return home via rickshaw. Niaz Muhammad, after consulting Khubaib’s father, sought legal action against Arslan for sexual coercion, intimidation, illegal confinement, and threats, prompting the FIR’s registration”.*

3. The learned counsel for the Applicant has argued that the applicant is entitled to bail due to glaring contradictions in the prosecution’s case, including inconsistencies in the minors’ testimonies (e.g., sudden introduction of sodomy allegations in Section 164 Cr.P.C. statements absent in the FIR/Section 161 Cr.P.C., discrepancies in transportation modes, and conflicting accounts of how the minors escaped), the complete lack of

corroborative medical or forensic evidence (no injuries, medical reports, or DNA proof), and the non-prohibitory nature of the charges under **Section 377 R/W 511 PPC** (attempted sodomy, punishable by half the penalty of the substantive offense, thus falling outside the prohibitory clause of **Section 497 Cr.P.C.**). He emphasizes that the case qualifies for “further inquiry” under **Section 497(2) Cr.P.C.** given the shifting narratives, fabrication risks (e.g., retaliatory inclusion of the mobile phone as evidence after the applicant sought its return), and proven ulterior motives (extortion via a prior police complaint by the applicant and a property dispute over a mechanic shop). The counsel underscores the applicant’s cooperation (DNA samples, Court appearances), clean record, and constitutional rights to liberty, fair trial, and dignity (**Articles 9, 10A, 14**), asserting that the FIR is a malicious, evidence-deficient fabrication designed to harass the applicant, warranting bail to prevent miscarriage of justice. Lastly, the learned counsel prayed for grant of bail to the Applicant.

4. The learned Additional Prosecutor General argues that bail must be denied given the gravity of the charges under **Section 377, R/W 511 PPC** (attempted sodomy against minors), which inherently demands stringent scrutiny to protect vulnerable victims and societal interests. He further contends that the minors’ **Section 164 Cr.P.C.** statements, though belatedly introducing sodomy allegations, are credible and carry judicial weight, as traumatic disclosures often emerge incrementally. He adds that alleged discrepancies in transportation or escape narratives are peripheral and do not negate the core *actus reus* of the offense, while the absence of

medical evidence is irrelevant for an *attempt* charge, which relies on testimonial proof. He emphasizes that the belated reference to the mobile phone reflects evolving investigative findings, and the accused's attempt to retrieve it suggests consciousness of guilt. He further asserts that claims of extortion or property disputes are speculative, lack documentary corroboration, and appear diversionary. He highlights that granting bail risks witness tampering, given the accused's proximity to the victims and proactive efforts to influence evidence. He underscores that the trial court's dismissal of bail was prudent, having assessed testimonial coherence and *prima facie* culpability. He stresses that public interest and deterrence mandate prioritizing minor protection over the accused's liberty, as bail would erode trust in the justice system and disincentivize reporting of sexual crimes. He concludes that the defense's hyper-technical objections misrepresent evidentiary standards, and the *prima facie* case justifies trial without pre-conviction incarceration being deemed unjust. Lastly, the learned APG prayed for dismissal of bail application of the Applicant.

5. The learned counsel for the Complainant has argued that the applicant/accused is a police officer in Traffic Police Karachi and misusing the concession of bail threatening to the complainant on daily basis. He further argued that the bail must be denied given the gravity of the offense involving sexual exploitation of minors, which demands zero tolerance to protect vulnerable victims and uphold societal interests. He emphasizes the credibility of the minors' Section 164 Cr.P.C. statements, recorded judicially, asserting that delayed

disclosure of sodomy allegations reflects trauma-induced hesitation, not fabrication. He contends that minor discrepancies (e.g., transportation mode) are immaterial to the core charge of attempted sodomy under Sections 377/511 PPC, which relies on testimonial evidence, not medical proof, as corroboration is unnecessary for attempt-based offenses. He highlights the accused's consciousness of guilt in retrieving his mobile phone post-FIR, suggesting an effort to destroy evidence, and dismisses claims of extortion or property disputes as baseless and unsubstantiated by prior complaints or documentation. He stresses the risk of witness intimidation due to the accused's proximity to the victims' families and urges the Court to invoke the doctrine of *parens patriae* to prioritize minors' welfare. Supporting the trial court's dismissal of bail, he asserts that the *prima facie* case, grounded in credible testimonies and the accused's conduct, justifies trial without pre-conviction release. He concludes that granting bail would set a perilous precedent, undermining justice for victims and deterring reporting of sexual crimes against minors.

6. I have given due consideration to the arguments advanced by the learned counsel for the applicant/accused, the learned counsel for Complainant as well as the learned Additional Prosecutor General. Furthermore, I have meticulously examined the material available on record with utmost care and judicial prudence. Perusal of record shows that the Applicant stands accused of compelling two minors, Zain-ul-Abideen and Khubaib, under the threat of a firearm, to engage in sodomy with one another. He allegedly recorded videos and took nude photographs of the victims to blackmail

them into further sexual exploitation. These allegations are strongly supported by the victims' sworn testimonies under Section 164 of the Criminal Procedure Code (Cr.P.C.), which explicitly identify the Applicant as the principal offender. During trial proceedings, the Applicant accessed his mobile phone—containing explicit material—by entering the password, thereby confirming his sole control over the device. The trial Court reviewed the video evidence, which depicted the minors in a state of visible fear and distress, corroborating the use of coercion. This material substantiates the Applicant's intent to exploit the victims through blackmail. The video evidence, combined with the Section 164 statements, forms irrefutable proof of guilt. The gravity of the offense—marked by the sexual exploitation of minors, intimidation, and blackmail—constitutes a severe societal harm, necessitating the outright rejection of bail. Such crimes strike at the core of societal values and demand zero tolerance. Evaluating evidentiary inconsistencies at this stage is inappropriate, as bail hearings are not intended for exhaustive trial-like scrutiny. Given the heinous nature of the charges and their profound impact on communal conscience, the denial of bail is imperative to uphold justice and protect vulnerable victims.

7. Sections 377A and 377B, introduced through the Criminal Law (Second Amendment) Act of 2016, establish the offence of sexual abuse. Section 377A defines sexual abuse as any act or series of acts involving the employment, use, coercion, persuasion, inducement, enticement, or forceful engagement of a person in sexually explicit conduct when the victim is under eighteen years of age. Such conduct includes, but is not limited

to, fondling, stroking, caressing, exhibitionism, voyeurism, or any other form of obscene or sexually explicit behavior, whether real or simulated. Notably, this provision applies regardless of the victim's consent and covers both standalone acts and those occurring in conjunction with other offences. Meanwhile, Section 377B prescribes the penalties for individuals convicted of sexual abuse as defined under Section 377A. Given that the Applicant is, prima facie, linked to the charges under Sections 377, 511, and 377A of the Pakistan Penal Code, 1860, read in conjunction with Section 377B, the Applicant is not eligible for bail at this current stage. In a parallel legal context, the Islamabad High Court adjudicated in *Nauman Hussain v. The State & Another (2022 MLD 958)*, wherein it was authoritatively observed that: *"Even otherwise, under section 377-A, P.P.C, in order to constitute offence of section 377-B, P.P.C., no actual penetration is required and the offence is committed even where there is stroking, caressing, exhibitionism, etc. and the modes exhaustive. Moreover, report by the Director, FIA is categoric that offence under section 377, P.P.C. has been committed. For what has been stated above, the instant petition is without merit and is accordingly dismissed"*.

8. After carefully examining the relevant circumstances and applicable legal provisions, this Court finds no valid grounds to grant the bail to the Applicants/accused. Therefore, as the present bail application lacks merit, it is hereby declined. Furthermore, the ad-interim pre-arrest bail previously granted to the Applicant by this Court through the Order dated: 30.10.2024 is hereby recalled.

It is expressly clarified that the observations and conclusions rendered in this order are **strictly limited to the disposal of the present bail application** and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or defense—during the trial proceedings. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage.

**JUDGE**