

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2467 of 2024

Applicant : Muhammad Ayyub son of Bakht-e-Kareem
Through M/s. Muhammad Aslam & Dindar Ali,
Advocates

Respondent : The State
through Ms. Seema Zaidi, Addl. P.G. Sindh
duly assisted by Ms. Asiya Munir, advocate

Date of hearing : 10.04.2025

Date of order : 25.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant Muhammad Ayyub seeks post-arrest bail in a case bearing crime No. 117/2024, for offence u/s 376 PPC of Police Station Iqbal Market, Karachi. His bail plea was declined by the learned Additional Session Judge-X Karachi West, vide order dated 25.09.2024.

2. The allegation against the applicant is that he committed an act which falls within the ambit of Section 376 PPC involving a minor girl aged about 11 years. Consequent upon; case was registered inter-alia on above facts.

3. At the very outset, learned counsel contended that the applicant is innocent and has been falsely implicated due to personal enmity and neighborhood disputes. He submits that there is a delay of six hours in registration of case, which casts doubt on the veracity of the allegations. It is further argued that the statement of the alleged victim recorded under Section 164 Cr.P.C. contains inconsistencies with the version given in the FIR. It is further submitted that the medico-legal examination and subsequent forensic reports did not yield conclusive results implicating the applicant. The learned counsel has emphasized that no independent eyewitnesses have supported the prosecution version, and that the prosecution has yet to produce any reliable material to establish guilt. Lastly, it is argued that the applicant has no criminal record and is languishing in custody without progress in trial, which justifies the grant of bail. Learned counsel placed his reliance on reported case laws 2016 SCMR 2176, 2016 SCMR 1523, and 2016 SCMR 1399.

4. On the other hand, the learned Deputy Prosecutor General as well as counsel representing the complainant have strongly opposed the grant of bail. They argue that the FIR was promptly lodged after the incident and the name of the applicant was specifically mentioned therein with clear attribution of role. The minor victim, in her statement under Section 164 Cr.P.C., reiterated the allegations and implicated the applicant in unequivocal terms. It is further submitted that the statement was recorded before the learned Magistrate after due inquiry, and that it carries material evidentiary value for the purposes of this stage. They have relied upon authoritative precedents to submit that in offences of like nature, which typically occur in private and without the presence of eyewitnesses, the testimony of the victim alone, if found to be credible, is sufficient for the purpose of framing charges and even conviction. It is further contended that the applicant has failed to demonstrate any mala fide or ulterior motive on the part of the complainant to falsely implicate him in such a serious matter.

5. The allegation against the applicant involves an offence under Section 376 PPC, which not only falls within the prohibitory clause of Section 497 Cr.P.C. but also involves a child victim, thereby attracting grave societal and legal concern. A perusal of the FIR reveals that the applicant was nominated with a specific role. Furthermore, the alleged victim, who is of tender age, has repeated her accusation before a Judicial Magistrate under Section 164 Cr.P.C., wherein she has identified the applicant and described the circumstances in detail. No material has been brought on record at this stage to suggest any motive for false implication. The nature of the accusation, when considered in light of the victim's consistent statements and the absence of enmity, creates sufficient grounds for connecting the applicant with the alleged offence, at least for the purpose of bail.

6. The contention of the learned counsel for the applicant regarding the absence of direct forensic support is not sufficient to dislodge the other available evidence at this stage. As laid down by the Hon'ble Supreme Court in numerous cases that availability or otherwise of DNA evidence does not independently determine the fate of a sexual offence case and it has been consistently held that the sole testimony of the complainant and victim, if found to be confidence-inspiring, may be sufficient to connect an accused with the alleged offence. In case of *Shakeel Ahmed Vs. The State* (PLD 2010 Supreme Court 47) it was held,

It is well-established by now that omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence.

7. I would like to concur the other case laws cited titled as Haji Ahmad v. State (1975 SCMR 69), and in case of Irfan Ali Sher v. State (Jail Petition No. 324/2019, decided on 17 April 2020), the Supreme Court observed,

As regards the semen not being sent for DNA forensic determination with a view to link it with the perpetrator is not a requirement of law.

8. In *Criminal Appeal No. 251/2020* decided on 04.01.2021 and *Criminal Petition No. 75-Q/2021* decided on 21.10.2021, the Hon'ble Apex Court observed that such offences often occur in solitude, and therefore insistence on the presence of independent eyewitnesses may not be appropriate. It is a settled principle of criminal jurisprudence that for the purpose of bail, only a tentative assessment of the material is to be undertaken, without delving into a detailed evaluation of the evidence. From the material placed before the Court, the allegations appear to be specific, supported by the victim's own account, and sufficiently corroborative at this stage to justify the denial of bail. No ground for further inquiry or exceptional circumstance warranting the exercise of discretion in favour of the applicant has been made out.

9. Undoubtedly, in the case law relied upon by the learned counsel for the applicant, the accused persons were granted bail; however, the facts and circumstances of the present case are clearly distinguishable. In *Haibat Khan v. The State & others* (2016 SCMR 2176), bail was granted on the ground that the incident was either an abortive attempt or merely preparatory in nature. Moreover, the investigating agency had concluded that the allegations against the accused were false, and a report had already been submitted seeking cancellation of the FIR. In *Abdul Ghaffar v. The State and others* (2016 SCMR 1523), no act of sodomy was committed, and the accused had already remained incarcerated for a considerable duration. Similarly, in *Muhammad Nauman Hanif v. The State and another* (2016 SCMR 1399), the delay of eight days in lodging the FIR, coupled with the fact that the medical legal reports of both alleged minor victims did not reflect any signs of injury around or within the anal region, weighed in favor of the accused. Hence, the precedents cited are factually distinguishable and do not offer direct support to the applicant's case.

10. Given the above, the applicant has failed to make out a case for further inquiry as envisaged under Section 497(2) Cr.P.C. Accordingly; the instant bail application is dismissed. However, the learned trial court is directed to conclude the trial preferably within a span of 90 (Ninety) days. Needless to mention, the observations made hereinabove are tentative in nature and shall not prejudice either party during the course of trial.

J U D G E