

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.708 of 2025

Applicant : Ali Ayaz S/o Muhammad Ayaz
through Mr. Abdul Baqi Lone, Advocate

Respondent : The State
through Ms. Rubina Qadir Addl. P.G. Sindh.

Date of hearing : 28.03.2025

Date of order : 07.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant seeks post-arrest bail in a case bearing crime No.918/2024, offence u/s 365-B, 376 & 34 PPC of PS SSHIA Malir. The bail plea of applicant was earlier declined by the learned Additional Sessions Judge-V, Malir Karachi, vide order dated 10.03.2025.

2. Briefly stated, the prosecution's version is that on 12.08.2024, the complainant, Peer Muhammad Samoo, left his residence to go to Saddar. At about 1400 hours, he was informed that his daughter, Muskan, had gone to college in Jahanabad, but did not return home, and her mobile phone was found switched off. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel argued that the applicant has been wrongfully accused, driven by ill intention and ulterior motives. He pointed out that the FIR was filed after an unjustifiable delay and claimed that the victim had willingly left her residence to pursue college admission. He further stated that the victim later entered into a court marriage with co-accused Ayan Ali of her own volition and free will. Highlighting that Ayan Ali has already been granted bail by this Court, the counsel contended that principles of judicial consistency warrant the same treatment for the present applicant. He also noted that the investigation has concluded and the applicant is no longer needed for further inquiry, thus making him eligible for bail. In support of these submissions, he cited precedents reported in 2016 PCr.LJ Note 92, 2020 PCr.LJ 245, and 2019 MLD 786.

4. Conversely, the learned APG for the State vehemently opposed the bail application. She submitted that there was no allegation of hostility or animosity between the complainant and the accused, thereby eliminating any likelihood of a false accusation. The APG maintained that the FIR was lodged without undue delay, and although the initial report did not identify specific individuals, the subsequent investigation unveiled the involvement of the present accused. She highlighted that the victim's statement recorded under Section 164 Cr.P.C. strongly supports the prosecution's version. Furthermore, the APG asserted that the nature of the offence places it squarely within the prohibitory clause of Section 497(1) Cr.P.C. She argued that the accused played a central and active role in the commission of the offence, a fact further substantiated by medical evidence backing the victim's claims. Based on these submissions, the learned APG urged the Court to reject the bail application. She also referred to precedents reported in 2022 SCMR 50 and SBLR 2020 SC 77.

5. The case record shows that the FIR was filed by the complainant against unidentified persons, alleging the abduction of his daughter, who had reportedly left home on her own to seek college admission. During the course of the investigation, the Investigating Officer retrieved Call Data Records (CDR), which revealed a link between the victim and the applicant. The applicant was taken into custody on 20.09.2024. Later, on 26.08.2024, the victim visited the police station with co-accused Ayan Ali and presented a Nikahnama, asserting that they had entered into a marriage. A recovery memo was duly prepared, and custody of the victim was subsequently restored to her parents.

6. On 30.09.2024, the victim recorded her statement under Section 164 Cr.P.C., in which she clearly identified the applicant, along with co-accused Sadiq Jan and Zafarullah, as those who had raped her. The applicant is also accused of forging a fake Nikahnama between the victim and Ayan Ali in an attempt to avoid legal consequences. According to her statement, the applicant misled her with promises of marriage, confined her, and with the help of the co-accused, subjected her to repeated acts of sexual abuse. She further stated that she was later coerced into marrying Ayan Ali.

7. Her claims were substantiated by medical examination indicating sexual activity and an ultrasound confirming her pregnancy. Additionally, a

birth certificate in the investigation file verifies that she is 16 years of age. In light of these developments, charges under Sections 3 and 4 of the Sindh Child Marriage Restraint Act and Section 375(v) PPC were added to the existing charge under Section 365-B PPC. Therefore, the case does not merit further inquiry as defined under Section 497(ii) Cr.P.C.

8. Moreover, the applicant has not established any animosity or personal grudge that could suggest a motive for falsely implicating him in such a serious offence. The charges against him fall under the prohibitory clause of Section 497(1) Cr.P.C. There is ample material available, including the statements of both the complainant and the victim, as well as corroborative medical evidence, that connects the accused to the alleged crime. While the defense has invoked the principle of consistency, it must be noted that the victim did not directly accuse Ayan Ali of the primary offence, but only mentioned his involvement in the preparation of a forged Nikahnama at the behest of the main accused (applicant). As such, Ayan Ali's case is distinguishable from that of the applicant.

9. The defense has relied on previously decided cases; however, the facts of those cases differ significantly from the present matter. In *Shafqat Hussain @ Viki vs. The State & another* (2016 P.Cr.L.J (Note) 92), the court held that the complainant's version appeared to be an afterthought, no signs of violence were found on the victim, and there was no allegation of Zina. Similarly, in *Muhammad Yousuf v. The State & another* (2020 P.Cr.L.J 245), the alleged abduction was never reported to the police, and the FIR was lodged four months after the complainant returned home, raising doubts about the credibility of the prosecution's evidence.

10. In contrast, in the present case, the victim was misled and sexually exploited by the applicant and two others. Moreover, a forged Nikahnama was fabricated in an attempt to evade legal consequences. In *Dinullah and another v. The State* (2019 MLD 786), cited by the learned counsel for the applicant, the court clarified that for an offence under Section 365-B PPC to be established, two elements must be present: the unlawful movement of a woman from one place to another, and the intention behind it, to compel her into marriage against her will or seduce her into sexual intercourse. This interpretation supports the prosecution's position in the present matter.

11. In view of the above discussion, I am not persuaded to grant the relief sought. Therefore, the bail application is hereby dismissed. It is clarified that these observations are of a preliminary nature and shall not affect the merits of the case during the trial proceedings.

J U D G E

Shahbaz/PA