

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Bail Application No. S-282 of 2025

Applicants: Arbab Zaheer @ Zaheeruddin and others
through Mr. Yar Khan Shambani,
Advocate

State: Through Mr. Zulfiqar Ali Jatoi, Additional
Prosecutor General

Date of Hearing: 05.05.2025

Date of Order: 05.05.2025

ORDER

Zulfiqar Ali Sangi, J.: The applicants/accused, namely Arbab Zaheer @ Zaheeruddin son of Ali Gul, Sadam Hussain and Tasleem both sons of Arbab Zaheer @ Zaheeruddin, all by caste Dharejo seek confirmation of pre-arrest bail in respect of FIR No. 33/2025, registered at Police Station Kandhra, under Sections 452, 506(ii), 354, and 337-H(ii) of the Pakistan Penal Code (PPC). The learned Judge, Special Court GBV/Additional Sessions Judge-II, Sukkur, dismissed their earlier bail application vide order dated 27.03.2025. The applicants have now approached this Court for the same relief.

2. The contents and particulars of the FIR are already detailed in the bail application and are evident from the copy of the FIR annexed therewith; hence, reproduction herein is deemed unnecessary. Reliance is placed upon *Muhammad Shakeel v. The State and others* (PLD 2014 SC 458).

3. Learned counsel for the applicants submitted that the applicants had been falsely implicated due to a matrimonial dispute, which is explicitly acknowledged in the FIR. He further contended that there is an unexplained delay of twenty-eight (28) days in the registration of the FIR. Moreover, he pointed out that applicant/accused No. 2, namely Sadam Hussain, has lodged FIR No. 31/2025 at the same police station against the complainant party, thereby warranting further inquiry into the matter. He argued that all the witnesses are closely related to the complainant and thus are interested witnesses. He also submitted that the parties are entangled in a matrimonial dispute arising from the freewill marriage of Sadam Hussain with Mst. Asiya. Additionally,

it was argued that except for Sections 452 and 506(ii) PPC, all other sections invoked are bailable, and the aforementioned two sections do not attract the prohibitory clause of Section 497 Cr.P.C. He concluded by praying for confirmation of the interim pre-arrest bail earlier granted to the applicants.

4. On the previous date of the hearing, the complainant Nizamuddin appeared and requested time; however, today he is absent and no intimation has been received regarding his non-appearance.

5. The learned Additional Prosecutor General opposed the confirmation of bail, asserting that the applicants are specifically named in the FIR with distinct roles. He further submitted that the alleged freewill marriage has been denied by Mst. Asiya, thereby disentitling the applicants from the relief sought.

6. I have heard the arguments advanced by learned counsel for the applicants and the learned Additional Prosecutor General for the State, and have examined the available record with their able assistance.

7. A perusal of the impugned order dated 27.03.2025 reveals that the learned Judge, Mr Javed Hussain Mirani, called for and relied upon the R&Ps of another concluded case wherein the statement of the woman was recorded. This approach is legally untenable, as bail applications are to be decided tentatively based on material available on record. The evidence or statement from an entirely separate case cannot be taken into consideration at this stage.

8. A review of the FIR indicates that the alleged incident occurred on the night of 06.02.2025, while the FIR was registered on 03.03.2025. The explanation offered by the complainant for such delay is found to be unsatisfactory. Furthermore, the offences with which the applicants are charged carry punishments not exceeding seven (07) years and thus do not fall within the prohibitory clause of Section 497 Cr.P.C. As established in *Tariq Bashir v. The State* (PLD 1995 SC 34) and *Muhammad Tanveer v. The State and another* (PLD 2017 SC 733), in such circumstances,

grant of bail is a rule and refusal is an exception, requiring strong justification.

9. The Honourable Supreme Court in *Muhammad Imran v. The State and others* (PLD 2021 SC 903) laid down the exceptions under which bail may be denied: (a) likelihood of absconding, (b) potential tampering with prosecution evidence or influencing witnesses, and (c) repetition of the offence due to past conduct. The burden lies on the prosecution to establish the applicability of any of these exceptions. In the present case, no such grounds have been demonstrated by the prosecution.

10. In view of the above and based on a tentative assessment of the record, I am of the opinion that the applicants have made a case for confirmation of pre-arrest bail. Consequently, the interim pre-arrest bail granted to them vide order dated 07.04.2025 is hereby confirmed on the same terms and conditions.

11. It is clarified that the observations made herein are tentative and shall not prejudice the merits of the case during trial.

JUDGE