

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Bail Application No. S-489 & S-509 of 2025

Applicants: 1. Muhammad Younis s/o Mir Muhammad,
by caste Sangi,
Through Mr. Badruddin Indhar, Advocate

2. Faheem s/o Azeem, by caste Sewro
Through Mr. Rukhsar Ahmed Junejo,
Advocate

Complainant: Muhammad Nawaz Shaikh
Through Mr. Ali Hassan Seelro, Advocate

The State: Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 11.08.2025

Date of order : 11.08.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. –Applicants Muhammad Younis and Faheem and seek confirmation of interim pre-arrest bail earlier granted vide orders dated 05.06.2025 and 18.06.2025 respectively, in a case bearing Crime No.35 of 2025, registered at Police Station Sangi, for offence under Sections 377-B, 506/2 & 34 PPC.

2. The prosecution alleges that about seven months prior to the FIR dated 05.11.2024, applicant Faheem removed the complainant's son, Yasir Nawaz, aged about 15/16 years, from a shop; the complainant and companions, upon searching, alleged witnessing carnal intercourse in a garden, by applicants and co-accused armed; the victim allegedly informed them of the acts and threats.

3. Learned counsel for the applicants submit that they are innocent, falsely implicated due to mala fides, with the FIR founded solely on related witnesses and lacking independent corroboration. They emphasis a seven months unexplained delay in reporting the offence, despite proximity to the police station, a circumstance well-recognized in Pakistan's bail jurisprudence as undermining the credibility of allegations. Learned counsel referred 2022 P.Cr.L.J Note 47. Further, they rely on the final medico legal certificate by the

MLO asserting absence of recent sexual intercourse, directly contradicting the core prosecution claim. They emphasis, a conclusive medical and DNA evidence is essential in sexual offence cases and its absence entitles bail or acquittal where other corroboration is wanting. They also relied upon case law 2024 MLD 1563.

4. It is also argued and reluctantly admitted by the learned Deputy Prosecutor General during the course of hearing that the statements of the alleged victim under Section 161 and 164, Cr.P.C. have not been recorded thus far, a lapse further weakening the prosecution case and casting doubt on its immediacy and seriousness. The learned DPG and counsel for the complainant nonetheless opposed bail on grounds of gravity and specific naming of the applicants.

5. The law provides, the pre-arrest bail can be granted as an extraordinary remedy to protect an individual from false or mala fide charges where imminent arrest is intended for purposes other than the administration of justice. It is established that mere seriousness of the charge does not bar pre-arrest bail if mala fides, delay, and lack of credible evidence are manifest. Where the investigation does not connect the accused or medical evidence contradicts the alleged offence, bail may be confirmed. The Courts consistently holds that medical evidence in rape or unnatural offence cases is pivotal; where such evidence denies the purported act or forensic corroboration is absent, the benefit of doubt goes to the accused (2024 MLD 1563; 2021 MLD 169). For offences under Section 377-B PPC, conviction requires proof of actual penetration or credible medical corroboration as per section explanation; where medical findings negate penetration and the victim's statement is missing, the evidentiary threshold for denial of bail is not met. In the present case, these principles apply squarely. The lengthy unexplained delay in FIR, absence of corroborative medical evidence, and the prosecution's own failure to record the victim's statement, satisfy the essential ingredients for grant of pre-arrest bail. The applicants, having surrendered before the Court and cooperated, have not misused their concession. Custodial interrogation is unnecessary. Accordingly, and in light of dictum laid down in the cited authorities, the interim pre-arrest bail earlier granted to the applicants is confirmed, on same terms and conditions with directions to join investigation/trial. The observations herein are tentative and shall not prejudice the merits of the case at trial.

6. Office is directed to place a signed copy of this order in the captioned connected matter.

J U D G E