

IN THE HIGH COURT OF SINDH, KARACHI.

Cr. Bail Appln. No.2119 of 2025

Applicant : Tariq Mehmood son of Dost Muhammad,
through Mr. Muhammad Afzal Roshan,
advocate.

Respondent : The complainant,
Through Mr. Nusrat Gul Malik, advocate.

The State
through Mr. Khadim Hussain Khuharo,
Additional Prosecutor General, Sindh.

Date of hearing : 22.10.2025.

Date of Order : 24.10.2025.

O R D E R

MIRAN MUHAMMAD SHAH, J:- Through the instant Criminal Bail Application, the applicant above named seeks post-arrest bail in Crime No.338 of 2025, under sections 376 and 511 P.P.C, registered at Police Station Ibrahim Hyderi, Karachi. The applicant has approached court of District and Sessions Judge, Malir, Karachi for post arrest Bail vide Criminal Bail Application No. 2871 of 2025, however, it was assigned to learned Vth Additional Sessions Judge, Malir, Karachi, who after hearing the parties has declined the request vide order dated 16.07.2025. Hence this application.

2. Now, in compliance with the last order dated 03.10.2025, a compromise affidavit has been filed by the counsel for the complainant, who is present along with complainant. The said affidavit is taken on record. The complainant is present in Court and upon query of this Court, states that he has no objection if the present applicant/accused is granted bail in this matter, as the case was registered due to some misunderstanding.

3. The learned counsel for the applicant/accused submits that in support of the grant of bail to the applicant, the complainant has filed a compromise/affidavit. He further submits that a settlement has taken place between the parties outside the Court and the complainant has executed a compromise/affidavit in favour of the applicant/accused. Hence, in light of the no objection, the present applicant/accused may be granted bail. In support of his submissions, he placed reliance upon

the case reported as 2021 YLR Note 124, PLD 2013 (Lahore) 651 and 1997 P.Cr.L.J. 1193.

4. On the other hand, learned counsel for the complainant as well as the complainant present in Court, raised no objection to the grant of bail to the present applicant/accused. The complainant has also filed a compromise/affidavit in favour of the present applicant/accused supporting the grant of bail.

5. Conversely, the learned Additional Prosecutor General, Sindh strongly opposes the grant of bail to the present applicant/accused on the ground that a compromise in a non-compoundable offence is buchery of law and the justice system. The compromise/affidavit filed by the complainant for giving no objection to the grant of bail to the applicant/accused, cannot be allowed as the main section 376 PPC is non-compoundable offence. Allowing such an affidavit at the bail stage would amount to an illegality and would constitute an attempt to hoodwink with the procedure prescribed under the criminal law statute. In support of his contention, he has placed reliance upon the case reported as 2004 P.Cr.L.J. 550.

6. I have heard the learned counsel for the applicant, learned counsel for the complainant as well as learned Additional Prosecutor General, Sindh and perused the material available on record. It has come on record that the case has already been challaned and the compromise/affidavit filed by the complainant before this Court is not a permissible procedure, especially when the trial Court is proceeding of an offence which are not compoundable, reliance is placed upon the case law reported as **1997 S.C. 347**, which is reproduced as under:-

“At the time of hearing of bail application Court is supposed to do tentative assessment of the material available on record, which is different from final appraisalment and evaluation of evidence which is to be done by the trial Court which has to record evidence of witnesses. A trend has developed nowadays that eye-witnesses sometimes take a somersault and give statements which are different from prosecution case and sometimes file affidavits also at the stage of hearing of bail applications of accused persons with intention to creating doubt in the case of prosecution to enable the accused to get bail. The Courts have to be very careful in such cases

and see that bail applications are disposed of strictly according to law on merits keeping in view the distinction between tentative assessment and actual evaluation of evidence by the trial Court. It is the mind of the Court which is to be satisfied where about-turn of some of eye-witnesses in the manner stated above shakes up the whole prosecution case from the point of view of credibility of the remaining material.”

7. In light of the case law cited above, I am of the considered view that bail cannot be granted in non-compoundable offences on the basis of a compromise/affidavit filed by the complainant or other witnesses. A compromise can only be effected before the trial Court and only in respect of compoundable offences, as provided in Criminal Procedure Code, 1898. Hence, the present applicant/accused cannot be given the concession of bail on the basis of the compromise affidavit filed during the course of the arguments. Since the learned counsel for the applicant/accused has not touched the merits of the case and has solely relied upon the said compromise/affidavit. I, hereby declined the bail of the present applicant/accused on such ground. However, the learned trial Court is directed to examine the complainant and the victim within a period of thirty (30) days and if any material subsequently comes on record in favour of the present applicant/accused, he shall be at liberty to file a fresh bail application before the learned trial Court on merits.

8. The instant Crl. Bail Application stands disposed in the above terms.

JUDGE

Manthar Brohi

3. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated and he is the owner of two rented plots (No. 699 & 700) in New Labour Colony, Ibrahim Hyderi, Karachi. On the day of the alleged incident, he visited the properties to collect rent. Some land grabbers, aiming to usurp his property, attempted to take illegal possession, failed, and in retaliation, set his car on fire and maltreated him. Thereafter, they lodged a false FIR to exert pressure; that there is no MLO report supporting the alleged attempt to rape and no semen was found on the victim's clothes, and DNA analysis does not corroborate the prosecution's version; that the medical report showed no signs of physical violence or evidence of rape, therefore, the case falls under **Section 497(2) Cr.PC**, requiring further inquiry; that the incident allegedly occurred on 30-06-2025, yet the victim was medically examined only on 01-07-2025, with no explanation for the delay, raising doubts about the prosecution's version. There is no CCTV footage or CDR evidence to support the allegations. Contradictions exist between statements recorded under Sections 161 and 164 Cr.PC; that importantly in the second bail application, both parties appeared before the trial court and acknowledged a compromise through community elders, with no objection to bail despite presenting relevant case law, the trial court declined bail without due consideration; that as the offence does not fall under the prohibitory clause of Section 497(1) Cr.P.C., and given the constitutional right to liberty under Articles 4 and 9, bail is the rule and refusal the exception. The applicant prays for grant of post-arrest bail as no reasonable grounds exist to believe he committed a non-bailable offence, but sufficient grounds exist for further inquiry.

4. On the other hand, the learned counsel for the complainant strongly opposed the grant of bail on the ground that in cases of sexual violence against minors, the sole statement of the child victim if found trustworthy and confidence-inspiring is sufficient for declining bail especially where no material contradictions exists at the stage of bail. Therefore, he is not entitled for concession of bail. He lastly prayed for the dismissal of the applicant's bail application.

5. Conversely, the learned Additional Prosecutor General, Sindh vehemently opposed the grant of bail and adopted the arguments advanced by the learned counsel for the complainant. He lastly prayed for the dismissal of the applicant's bail application.

6. I have heard learned counsel for the parties and have gone through the material available on the record.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

8. The instant Crl. Bail Application stands disposed in the above terms.

JUDGE

Manthar Brohi

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Crl. Bail Appln. No. 2119 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of Bail Application.

22.10.2025.

Mr. Muhammad Afzal Roshan, advocate for the applicant.
Mr. Nusrat Gul Malik, advocate for the complainant
along with complainant Khaista Bahadur.
Mr. Khadim Hussain Khuharo, Addl. P.G. Sindh

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Mr. Muhammad Afzal Roshan, advocate for the applicant.
Mr. Nusrat Gul Malik, advocate for the complainant along with
complainant namely Khaista Bahadur is present in Court.
Mr. Khadim Hussain Khuharo, Addl. P.G. Sindh
