

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Application No. S-750 of 2025

Applicant : Muhammad Junaid son of Ghulam Hussain, Malik
Through Mr. Shabir Ali Bozdar, Advocate

Complainant : Nasir Ali s/o Liaquat Ali, Arain
Through Mr. Bilal Ahmed, Advocate

The State : Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 18.09.2025
Date of order : 25.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.– Applicant Muhammad Junaid Malik seeks post-arrest bail in a case bearing crime No.90/2025, for offences u/s 377, 511, 34 PPC of PS Daharki, having been declined bail by the learned Additional Sessions Judge-II, Mirpur Mathelo vide order dated 26.07.2025.

2.

As per prosecution theory, Muhammad Badar, the son of complainant, aged about 10 years, was playing with a bicycle outside their bakery on 25.05.2025 at about 1600 hours when two persons arrived on a motorcycle. One of them was identified as Muhammad Junaid (applicant), while the other remained unidentified but was clearly seen and could be identified if seen again.

It is alleged, the accused persons forcibly took his son from the bicycle, made him sit on their motorcycle, and went towards the city. The complainant and his brother Zahid Ali gave chase on their own motorcycle, but the accused persons vanished into Gulab Shah Colony. The complainant party began searching the streets and lanes of the colony.

At about 1630 hours, one Shahzad came to the scene. The complainant claims they heard cries of his son Muhammad Badar from a particular place. Upon opening the door and entering, they allegedly witnessed that the shalwar (lower garment) of both the accused Junaid and the victim were untied, and the accused was attempting to commit unnatural offence (sodomy) with the child.

The FIR further alleges that upon seeing the complainant party, the unidentified accused person produced a pistol from the fold of his shalwar and aimed it at them, causing them to remain silent out of fear. Subsequently, both accused persons allegedly escaped from the location.

The complainant states that after the accused fled, they dressed the child, who informed them that the accused persons had maltreated him, untied his shalwar and their own shalwar, and

were trying to commit zina with him forcibly, but escaped upon seeing the arrival of the complainant party.

The incident was reported as an attempt to commit unnatural offence in collusion between the named accused and the unidentified person, with allegations of kidnapping, confinement, and sexual assault of the minor victim.

3. First, learned counsel contended that the case involves only an attempt under Section 511 PPC, not the actual commission of the offence under Section 377 PPC. He emphasized that for attempt cases, the minimum punishment principle applies, and the punishment under Section 511 PPC is limited to one-half of the maximum punishment prescribed for the principal offence. Second, counsel argued that the maximum punishment for attempt under Section 511 PPC would be five years, which does not fall within the prohibitory clause of Section 497(1) Cr.P.C. Therefore, bail should be granted as a rule and refusal should be an exception. Learned counsel placed strong reliance on the following precedents;

1. *2016 SCMR 1523 - where bail was granted in similar circumstances involving allegations of unnatural offence with negative medical evidence*
2. *2016 SCMR 1399 - emphasizing the importance of medical evidence in cases of alleged sexual assault*
3. *2025 YLR 1223 - regarding benefit of doubt at bail stage*
4. *2024 SCMR 205 - on the principle of further inquiry under Section 497(2) Cr.P.C*

4. Third, counsel highlighted critical gaps in the prosecution evidence that both chemical and forensic molecular reports are negative, casting serious doubt on the allegations, the medical evidence shows only minor abrasion injuries on the victim's leg, which do not support the specific allegations under Section 377 PPC, despite allegations of threat with a firearm, no pistol was recovered from the applicant, the incident allegedly occurred in a thickly populated area (Gulab Shah Colony), yet no independent witness has been cited. Fourth, learned counsel argued several circumstantial factors that cast doubt on the prosecution case that the incident allegedly occurred on a Sunday/holiday when the applicant was residing with his joint family in a populated area near the police station, the complainant party allegedly witnessed the offence but failed to apprehend the accused on the spot, the accused allegedly escaped easily despite being caught in the act, there appears to be a prior dispute between the parties over property matters involving children. Fifth, counsel submitted that the applicant has no previous criminal

record and is a law-abiding citizen residing with his family. There is no apprehension of his absconding or tampering with evidence, and he is ready to furnish adequate surety.

5. The learned counsel for the complainant advanced the counter-arguments that the medical evidence clearly shows 04 injuries on the leg of the victim, indicating that some form of physical harm was inflicted upon the child. He argued that these injuries, though minor, corroborate the complainant's version that the child was maltreated. Learned counsel strongly contested the defense of false implication, arguing that there was no prior enmity between the parties that would motivate the complainant to falsely involve the applicant in such a serious case involving his own minor child. He submitted that no parent would risk the reputation and psychological trauma of their child for the sake of a false case. Counsel argued that the FIR was lodged promptly without any undue delay, indicating the genuineness of the complaint. There was no time for the complainant to concoct a false story or manipulate evidence. Learned counsel pointed out that while the applicant's counsel argued about a property dispute, they simultaneously claimed there was no enmity, creating an inconsistency in the defense position regarding the motive for false implication. Counsel emphasized the serious nature of the allegations involving a 10 year-old child and submitted that such cases require careful consideration, particularly where a minor victim is involved. He argued that the social impact and psychological trauma to the victim and family should be considered.

6. The learned Deputy Prosecutor General for the State confirmed that a prompt FIR was registered at Police Station Daharki without any delay, and all procedural requirements under the Code of Criminal Procedure have been followed. The investigation was conducted in accordance with the established legal framework. The DPG emphasized that the victim is only 10 years old, making this a case involving a minor child, which requires special consideration under the law. He submitted that cases involving children demand heightened scrutiny and protection of the victim's interests. The learned DPG highlighted that the medical evidence shows 04 abrasion injuries on the victim, indicating that physical harm was caused to the child. He argued that while the DNA reports may be negative, the medical evidence of injuries cannot be ignored. The DPG submitted that the charge under Section 511 PPC for attempt to commit unnatural offence is fully justified based on the facts and circumstances of the case. He argued that the failure to complete the act does not diminish the seriousness of the attempt. The learned DPG informed the court about the current status of the investigation and submitted that further

inquiry might reveal additional evidence. He requested that bail, if granted, should be subject to strict conditions to ensure the applicant's cooperation with the ongoing investigation. The DPG emphasized that public interest demands careful consideration in cases involving allegations against children, and that the grant of bail should not send a wrong message to society regarding the protection of minors.

7. Having heard the learned counsel for all parties and after conducting a tentative assessment of the available record, as is permissible and required at the bail stage, this Court proceeds to analyze the matter on the following legal and factual considerations:

8. At the outset, it is essential to establish the correct legal framework applicable to this case. The law on grant of bail is well-settled and has been consistently expounded by the superior courts. As held by the Supreme Court in *Sikandar A. Karim* (1995 SCMR 387), a court considering a bail application has to tentatively look at the facts and circumstances of the case, and once it concludes that no reasonable ground exists for believing that the accused has committed a non-bailable offence, it has the discretion to release the accused on bail. The court must ascertain whether reasonable grounds exist by examining the material placed before it by the prosecution to see whether some tangible evidence is available against the accused which, if left un rebutted, may lead to an inference of guilt. Mere accusation of a non-bailable offence would not be sufficient to disentitle an accused from being bailed out. The present case involves charges under Sections 377, 511, and 34 PPC. Section 377 PPC prescribes punishment upto imprisonment for life. However, the crucial distinction in this case is that the applicant is charged with attempt under Section 511 PPC, not the completed offence. Section 511 PPC provides that punishment for attempting to commit an offence shall be "imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of imprisonment provided for that offence". Therefore, the maximum punishment for attempt under Section 511 PPC in relation to Section 377 would be five years imprisonment, which does not fall within the prohibitory clause of Section 497(1) Cr.P.C. Since the case does not fall within the prohibitory clause, grant of bail is the rule and refusal is the exception. The court's discretion is not fettered, and bail should be granted unless exceptional circumstances warrant refusal.

9. This Court is mindful of the established principle that at the bail stage, courts should not conduct a deeper assessment of evidence but should limit themselves to a tentative assessment to determine whether reasonable

grounds exist for believing that the accused committed the offence. The medical examination reveals 04 abrasion injuries on the victim's leg. While these injuries indicate some form of physical contact, they do not specifically corroborate the nature of the alleged offence under Section 377 PPC. More significantly both chemical and forensic molecular reports have come back negative. Negative DNA reports in cases involving allegations of sexual assault create substantial doubt about the prosecution's case. The injuries are limited to abrasions on the leg and do not show the pattern typically associated with the specific allegations under Section 377 PPC. Several circumstantial factors raise questions about the prosecution's version viz. the alleged incident occurred on a Sunday in a thickly populated area (Gulab Shah Colony) near the police station, where the applicant resides with his joint family. The probability of committing such an act in these circumstances appears questionable. The prosecution alleges that the complainant party witnessed the offence but failed to apprehend the accused on the spot, allowing them to escape easily. This behavior appears inconsistent with the natural reaction of parents discovering such an act. Despite the populated location, no independent witness has been cited, which is unusual for an incident of this nature. No weapon was recovered despite allegations of threat with a firearm.

10. The case laws relied upon by the learned counsel for the applicant establish important principles. In *Abdul Ghaffar v. The State* (2016 SCMR 1523), the Supreme Court granted bail where medical evidence and DNA tests did not support the allegations of sodomy. The Court emphasized that negative forensic reports create reasonable doubt about the prosecution's case. In *Muhammad Nauman Hanif v. The State* (2016 SCMR 1399), bail was granted considering the delay in FIR and the fact that medical reports did not reflect injuries consistent with the allegations. This precedent directly supports the applicant's case. In *Naveed Sattar vs. The State* (2024 SCMR 205), the Supreme Court emphasized that benefit of doubt should be extended at the bail stage when there are reasonable grounds for further inquiry. The case appears to fall within the ambit of Section 497(2) Cr.P.C, which deals with cases requiring "further inquiry." As established in *Sikandar A. Karim* (supra), where reasonable grounds are not disclosed but grounds exist for further investigation into the guilt of the accused, the case falls under Section 497(2), and bail should not be withheld. The negative DNA reports, absence of specific medical corroboration, and various inconsistencies in the prosecution narrative suggest that this case requires further inquiry rather than immediate conviction.

11. Article 9 of the Constitution guarantees that no person shall be deprived of life or liberty save in accordance with law. Article 14 ensures the dignity of man and privacy of home. These constitutional provisions require that liberty should not be curtailed unless there are compelling reasons supported by credible evidence. The presumption of innocence is a fundamental principle of criminal jurisprudence, and the burden lies on the prosecution to establish reasonable grounds for believing that the accused committed the offence.

12. In *Abdul Ghaffar v. The State and others* (2016 SCMR 1523), the Supreme Court dealt with allegations of unnatural offence where the medical evidence and DNA test results did not support the prosecution's case. The Court granted bail after finding that "no act of sodomy was committed according to a doctor's opinion and DNA test results". This precedent is directly applicable to the present case. Like in Abdul Ghaffar's case, we have negative DNA reports and medical evidence that does not specifically corroborate the allegations under Section 377 PPC. The principle established is that forensic evidence carries significant weight in cases of alleged sexual assault, and negative results create substantial doubt about the prosecution's version. The negative chemical and forensic molecular reports in this case, combined with medical evidence showing only minor abrasions on the victim's leg (rather than injuries consistent with unnatural offence), creates a similar evidential scenario that warranted bail in Abdul Ghaffar's case.

13. In *Muhammad Nauman Hanif v. The State and another* (2016 SCMR 1399), the Supreme Court granted bail in this case considering "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". While the present case involves a prompt FIR, the medical evidence aspect is strikingly similar. The medical examination in instant case shows abrasion injuries on the victim's leg but does not reflect the specific type of injuries that would typically be associated with the alleged offence under Section 377 PPC. The Supreme Court in this case emphasized that medical evidence must be consistent with the nature of the alleged crime. The absence of such consistency creates reasonable doubt about the prosecution's case, warranting the grant of bail.

14. The case of *Naveed Sattar vs. The State and others* (2024 SCMR 205), emphasizes that benefit of doubt can be extended even at the bail stage when there are reasonable grounds for further inquiry. This case represents the evolving jurisprudence on bail applications, where courts are encouraged to

apply the benefit of doubt principle even at the preliminary stage if the evidence is not convincing. The Court in Naveed Sattar recognized that bail proceedings, while tentative in nature, must still adhere to principles of justice and fairness. In the present case, multiple factors including negative DNA reports, inconsistent medical evidence, absence of independent witnesses, and circumstantial improbabilities collectively create reasonable doubt that should benefit the applicant at this stage.

15. In *Muhammad Tanveer v. The State* (PLD 2017 SC 733), the Supreme Court emphasized that "grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C shall be a rule and refusal shall be an exception" and that "Courts of the Country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country". This judgment places a constitutional duty on the Courts to follow the established principles. The Supreme Court warned against mechanical decision-making and emphasized that "liberty of citizen is involved in such matters, therefore, same should not be decided in vacuum and without proper judicial approach". Given that the present case does not fall within the prohibitory clause (maximum punishment being 5 years for attempt), this Court is bound to treat grant of bail as the rule, requiring exceptional circumstances to justify refusal.

16. Based on the tentative assessment of available material, this Court observes several concerning gaps in the prosecution's case. First, the negative DNA and chemical reports constitute the most significant weakness. In the modern era of forensic science, these reports carry substantial probative value. Their negative result, particularly in a case alleging attempted sexual assault, creates reasonable doubt about the fundamental allegations. Second, the medical evidence lacks specificity. While the victim has sustained four abrasion injuries on the leg, these injuries do not correlate with the specific nature of the alleged offence under Section 377 PPC. Medical evidence in such cases should be consistent with the alleged criminal conduct. Third, the circumstantial evidence raises questions. The alleged incident in a populated area during daylight hours, the failure of eyewitnesses to prevent the crime or apprehend the accused, and the easy escape of the alleged perpetrators present an improbable sequence of events. Applying the legal standard established in *Sikandar A. Karim*, this Court must determine whether "reasonable grounds" exist for believing the applicant committed the offence. The evidence presented by the prosecution, when viewed tentatively, does not meet this threshold. The "reasonable grounds" standard requires more than suspicion; it demands

tangible evidence that would appeal to a reasonable person for connecting the accused with the crime. The negative forensic reports, inconsistent medical evidence, and circumstantial improbabilities fail to establish such reasonable grounds. This Court is mindful of the constitutional balance between individual liberty and public safety. While allegations involving children require serious consideration, the constitutional guarantee of liberty under Article 9 demands that detention be based on credible evidence rather than mere allegations. The presumption of innocence remains paramount, and in a case where the evidence is inconclusive, the constitutional principle favors liberty over detention.

17. This Court wishes to emphasize that bail proceedings are inherently tentative in nature. It has been held by the Hon'ble Apex Court in numerous judgments that courts at the bail stage must exercise judicial restraint and avoid conducting a mini-trial. The purpose is to determine whether reasonable grounds exist for detention, not to decide guilt or innocence. This distinction is crucial for maintaining the integrity of the criminal justice system. In the contemporary legal landscape, forensic evidence, particularly DNA analysis, has become increasingly important in criminal proceedings. Courts must give appropriate weight to negative forensic results, especially in cases involving allegations of sexual assault. Medical evidence must demonstrate logical correlation with the alleged criminal conduct. Generic injuries that could result from various causes do not, by themselves, establish the specific allegations in a charge sheet. Article 9 of the Constitution establishes liberty as a fundamental right that can only be curtailed through due process of law. This constitutional guarantee requires courts to scrutinize evidence carefully before sanctioning continued detention. The presumption of innocence is not merely a procedural safeguard but a substantive constitutional principle that must inform judicial decision making at every stage of criminal proceedings. Courts must maintain a delicate balance between protecting potential victims and safeguarding individual rights. This balance cannot be achieved through mechanical application of legal provisions but requires thoughtful judicial analysis of each case's unique circumstances. Public confidence in the judicial system is maintained not by automatic detention of accused persons, but by fair and reasoned decision-making that adheres to established legal principles while remaining sensitive to societal concerns.

18. After comprehensive consideration of the arguments advanced by learned counsel, examination of the relevant case law, and conducting a tentative assessment of the available evidence, this Court concludes, the case does not fall within the prohibitory clause of Section 497(1) Cr.P.C as the

maximum punishment for attempt under Section 511 PPC is five years. The prosecution has failed to establish reasonable grounds for believing that the applicant committed the alleged offence, given the negative forensic reports and inconsistent medical evidence. The case appears to require "further inquiry" under Section 497(2) Cr.P.C rather than continued detention. Continued detention would not be justified under the constitutional principles of liberty and presumption of innocence. The tentative assessment reveals about negative DNA and chemical reports creating substantial doubt; medical evidence lacking specific correlation with alleged offence, circumstantial evidence raising questions about prosecution version, no independent witnesses despite alleged public location, no recovery of alleged weapon despite threat allegations.

19. The case laws relied upon by the applicant, particularly *Abdul Ghaffar* (2016 SCMR 1523) and *Muhammad Nauman Hanif* (2016 SCMR 1399), provide direct precedential support for granting bail in similar evidential circumstances. Accordingly, this criminal bail application is allowed. The applicant Muhammad Junaid Malik is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Hundred Thousand only) and P.R bond in the like amount to the satisfaction of the learned trial court. It is clarified that the above assessments are tentative in nature and shall not effect the merits of trial.

J U D G E