

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Bail Application No.1462 of 2025**

Applicant : Clifford Smith, Through:  
Mr. Liaqat Ali Awan, advocate

Complainant : Wali Muhammad in person.

The State : The State: Through Ms. Rubina  
Qadir, Additional Prosecutor  
General, Sindh

Date of hearing : 06.03.2026

Date of Order : 18.03.2026

### **ORDER**

**Jan Ali Junejo, J:-** Through this application under Section 497, Cr.P.C., the Applicant seeks post-arrest bail in FIR No. 167/2025 registered at P.S. Baloch Colony, Karachi, under Sections 376/511, PPC, alleging attempt to commit rape of a minor child aged about 9/10 years. The Applicant's earlier bail application (Cr. Bail Application No. 1623/2025) was declined by the learned Additional Sessions Judge-III, Karachi South, vide order dated 23.05.2025.

2. As per the FIR lodged on 29.04.2025 at 2130 hours, the complainant Wali Muhammad states that his minor daughter Haleeman (aged about 9/10 years) was returning from tuition at about 1930 hours when their neighbor, namely Clifford Smith s/o R.H. Smith, resident of House No. E-299, Gali No. 22, Sector F, Manzoor Colony, lured her with money, took her inside his house, removed her shalwar and attempted to commit zina with her. On her hue and cry, people from the locality gathered, apprehended the

accused on the spot, and produced him at the police station, where the report was lodged.

3. Learned counsel for the Applicant contends that: (i) there is an unexplained delay of about two hours in lodging the FIR; (ii) the FIR does not name any eyewitnesses who apprehended and produced the Applicant at the police station; (iii) no medico-legal examination of the victim and no statement under Section 164, Cr.P.C., was recorded, reflecting investigative lacunae; (iv) there is a background property dispute, complainant allegedly pressed the Applicant to sell his house, and the Applicant, a septuagenarian from a minority community, has been falsely implicated; (v) there is no direct or corroborative evidence; thus, case calls for further inquiry within the meaning of Section 497(2), Cr.P.C. It is prayed that post-arrest bail be granted, the Applicant being a permanent resident, with no likelihood of absconsion or tampering, and ready to furnish solvent surety.

4. The Complainant appeared before this Court in person and raised no objection if the bail is granted to the Applicant.

5. Conversely, learned APG submits that: (i) the FIR was promptly lodged; even if there is a brief interval, it stands reasonably explained by the sequence of apprehension and production at the police station; (ii) the arrest memo bears names of Haji Amanullah and Dawood as witnesses to the apprehension/production, and omission of such names in the body of FIR is not fatal; (iii) the minor victim subsequently appeared

before the trial Court at the bail stage and unequivocally nominated the Applicant, narrating the incident; (iv) investigative omissions (medical/Section 164 Cr.P.C.) cannot enure to the benefit of the accused at the bail stage when primary ocular account of the child victim is available; (v) the alleged property-dispute motive is unsubstantiated; (vi) the offence is heinous, falling within the Anti-Rape (Investigation & Trial) framework, and is treated with gravity. It is prayed that the application be dismissed.

6. I have heard learned counsel for the parties, perused the FIR, the arrest/production memo, the impugned order of the learned Additional Sessions Judge dated 23.05.2025, and other material available at this tentative stage. The allegation pertains to an attempt to commit rape upon a child aged about 9/10 years, punishable under Sections 376/511, PPC. The nature of accusation is grave, the alleged occurrence took place inside the Applicant's house, and the complainant's version records on-the-spot apprehension by the neighborhood and immediate production at the police station. The arrest/production memo, as noted by the learned Court below, reflects witnesses Haji Amanullah and Dawood. At the bail stage, such documentary support suffices to prima facie corroborate the complainant's assertion that the Applicant was apprehended contemporaneously.

7. The contention regarding two hours' delay does not, on the face of it, erode the prosecution's case in sexual offences against minors, where initial shock, securing of the accused, and reaching the police station commonly account for brief intervals. Our

jurisprudence consistently holds that a short delay reasonably explained by the circumstances is not, by itself, a ground to discard the FIR at a tentative stage.

8. The argument that non-conduct of medico-legal examination and absence of a statement under Section 164, Cr.P.C., vitiate the case also does not persuade at this stage. First, the accusation is of attempt; in many such cases, medical signs may be inconclusive or absent. Second, investigative omissions are lapses attributable to the Investigating Officer and, absent demonstrated prejudice, do not ipso facto exculpate an accused at bail stage when there exists direct ocular account. Third, the learned Court below recorded that the child victim personally appeared at the hearing of bail and narrated material particulars while nominating the Applicant. At bail stage, such direct account, coupled with immediate apprehension, provides sufficient nexus. So far as the affidavit of "no-objection" filed by the complainant is concerned, it is settled law that while deciding a bail application the Court is required to undertake only a tentative assessment of the material available on record, which is distinct from the final appraisal and evaluation of evidence, a function exclusively reserved for the trial Court after recording the statements of witnesses. It has been observed that, in certain cases, eye-witnesses sometimes take a somersault and make statements inconsistent with the prosecution case and occasionally even file affidavits at the stage of bail proceedings with the apparent object of creating doubt in the prosecution case so as to facilitate the grant of bail to the accused. In such circumstances, the Courts are required to

exercise due caution and ensure that bail applications are decided strictly in accordance with law and on the basis of the material available on record, while maintaining the clear distinction between a tentative assessment at the bail stage and the actual evaluation of evidence during trial.

9. The plea of false implication due to a purported property dispute remains bald and unsubstantiated. No contemporaneous material has been shown to prima facie dislodge the accusation or to establish mala fides on part of the complainant. Mere assertion of ill-will, without more, cannot outweigh a child victim's categorical nomination supported by surrounding circumstances.

10. As to the Applicant's advanced age and minority status, these by themselves do not confer a right to bail where the allegations are serious, carry severe punishment, and the tentative assessment connects the accused with the occurrence. Likewise, the argument that the matter falls within "further inquiry" under Section 497(2), Cr.P.C., is not made out at this stage, given the direct version of the minor, the on-spot apprehension and production, and the corroborative arrest memo.

11. The offence alleged is heinous, carries significant moral turpitude, and falls within the heightened legislative concern for sexual offences against children. At the bail stage, the Court must balance the liberty of the individual with societal interest and the

potential impact on the victim and the course of justice. On the tentative assessment of the available record, there exist reasonable grounds to believe that the Applicant is connected with the commission of the alleged offence; thus, the bar contained in Section 497(1), Cr.P.C., is attracted, disentitling him to the concession of bail. No case for further inquiry under Section 497(2), Cr.P.C., is made out at this juncture.

12. For the foregoing reasons, Criminal Bail Application No. 1462 of 2025, filed on behalf of the Applicant, being devoid of merit, is hereby dismissed. It is, however, clarified that the observations made herein are tentative in nature, recorded solely for the purpose of deciding the instant bail application, and shall not, in any manner, prejudice the case of either party during the course of trial.

**JUDGE**