

PRESENTED ON
06-02-2025

[Signature]

Deputy Registrar

745

ACCUSED IN CUSTODY

900262-2
[Signature]

IN THE HIGH COURT OF SINDH AT KARACHI

Cr.B.A No. *418* of 2025

Abdul Rehman S/o Muhammad Ramzan Mirbahar,
Presently confined at District Jail Badin..... Applicant/Accused
R/o: Haydar Mahalla Ghara Town Taluka M.P. District
Distt. Taluka **VERSUS** *[Signature]*

The State Respondent

Crime No.153 of 2024,
Police Station: Ghara
U/S: 376 506/2 201
PPC.

APPLICATION U/S 497/498 CR.P.C



[Large diagonal line across the page]

THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 418 of 2025

Applicant : Abdul Rehman
through Mr. Ahmed Hussain
Jokhio, advocate.

Respondent : The State
through Mr. Qamaruddin Nohri,
Deputy Prosecutor General
a/w S.I. Zulfiqar Ali, I.O.

Complainant : Yaseen
through Mr. Dur Muhammad
Mallah, advocate a/w complainant

Date of hearing : 17th March, 2025

Date of Order : 17th March, 2025

ORDER



Jan Ali Junejo, J.-- The applicant/accused has filed the present criminal bail application seeking post-arrest bail in connection with FIR No.153 of 2024, registered at P.S. Garho, District Thatta, under Sections 376/506(2)/ 201, of the Pakistan Penal Code (PPC). Initially, the applicant/accused approached the learned Sessions Court, Thatta, through Bail Application No.931/2024, which was dismissed vide Order dated: 05.11.2024. Consequently, the Applicant filed Criminal Bail Application No.2619 of 2024 before this Court, which was also dismissed vide Order dated: 12.12.2024.

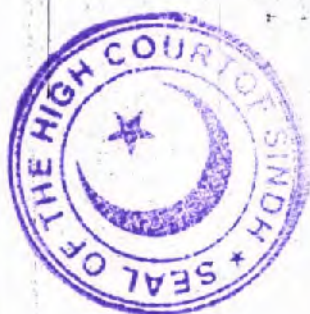
2. The facts relevant to the present criminal bail application are as follows:

"The FIR was lodged by Complainant Yaseen S/o Abdul Rehman on 22-10-2024 at 1500 hours. The Complainant alleged that his sister, Mst. Sitara, aged about 20 years,

[2]

married to Abdul Ghaffar S/o Muhammad Yousif Mirbahar, has been subjected to sexual harassment and assault by the Applicant/Accused, who is the Complainant's father. The Complainant further alleged that the Applicant/Accused has been committing zina with the victim and has beaten her whenever she refused his advances. The Complainant also stated that his mother, Shakeela, and father, Abdul Rehman (the Applicant/Accused), have not refrained from such misconduct. The Complainant reported the matter to local elders (Nekmards), but no action was taken. Subsequently, the Complainant approached the Additional Sessions Judge, MCTC Court Thatta, who issued an order leading to the registration of the FIR".

3. The learned counsel for the Applicant/Accused argued that there are no reasonable grounds to believe the Applicant committed the alleged offences, as the FIR lacks specific details such as the time of the incident, the number of attempts, and the last attempt, indicating mala fide on the part of the Complainant. He contended that there is no evidence on record except the Complainant's statement, and the DNA and medical reports are negative, which disproves the alleged offence. It is further argued that there are contradictory statements of the Complainant and PWs. The FIR was allegedly lodged maliciously due to a dispute over a plot, and the story narrated in the FIR is false, concocted, and unbelievable. It is further argued that the FIR does not disclose the exact time of the incident, suggesting it never occurred, and the inordinate delay in reporting raises doubts about its veracity, necessitating further inquiry under Section 497(2) Cr.P.C. The counsel emphasized that the basic concept of bail is to protect the liberty of an innocent person until proven guilty. He further



[Handwritten signature]

[3]

argued that the Applicant is no longer required for investigation as the challan has been submitted, the allegations require further probe, and the Applicant has been in custody for two months with no purpose served by his further detention. Additionally, the Applicant is a local person with no risk of absconding. The counsel prayed for the grant of bail, asserting that the Applicant's continued detention is unjustified. The learned counsel has relied upon the case laws i.e. 2020 SCMR 418; 2023 SCMR 397; 2023 MLD 1072; and 2022 P.Cr.L.J. 87.

4. The learned APG and counsel for the complainant opposed the bail application, arguing that the allegations against the Applicant are grave and involve serious offences of sexual harassment and assault. He contended that the Complainant's statement, supported by the FIR, establishes a prima facie case against the Applicant. The negative DNA and medical reports do not exonerate the Applicant, as the offence may not have left physical evidence, and the delay in lodging the FIR is explained by the Complainant's attempts to resolve the matter through local elders. The counsel for complainant highlighted that the Applicant, being the father of the Complainant and victim, held a position of trust and authority, which he allegedly abused. He further argued that the Applicant's previous bail applications were dismissed by both the Sessions Court and this Honorable Court, indicating no grounds for granting bail. The gravity of the offence and the need to protect the victim and society outweigh the Applicant's right to bail, and his release would jeopardize the integrity of the judicial process. The learned counsel prayed for the dismissal of the bail application, emphasizing that the Applicant's continued custody is necessary in the interest of justice.



[4]

5. I have carefully considered the arguments presented by the learned counsel for the Applicant/Accused as well as the learned Deputy Prosecutor General and learned counsel for the complainant. Additionally, I have examined the material available on record with the utmost care and judicial prudence, keeping in view the principle of tentative assessment. Upon such assessment, it is evident that during the proceedings of the pre-arrest bail application (No. 2619 of 2024), this Court, in its order dated 12-12-2024, made the following observation: *"The victim herself is present in Court, she has narrated the entire story of her ordeal. Besides, the FIR and 164 Cr.P.C. of the victim clearly point out that applicant is not entitled at least to grant of pre-arrest bail, which is extra ordinary concession meant only to protect innocent persons falsely implicated in the criminal case. The real daughter of the applicant has levelled heinous allegations against her father and prima-facie there is no record that these allegations are an outcome of any dispute between the parties. Hence, the applicant is not entitled to concession of pre-arrest bail. This application is dismissed"*. The FIR, along with the statement of the victim recorded under Section 164 Cr.P.C., prima facie establishes the involvement of the Applicant in the commission of the offence. The victim has consistently alleged that the Applicant, her father, committed **zina** with her and subjected her to physical abuse. These allegations are grave and supported by the FIR, which was lodged after attempts to resolve the matter through local elders failed. The negative DNA and medical reports do not exonerate the Applicant. The absence of physical evidence does not necessarily disprove the commission of the offence, especially in cases where the offence may not have left physical traces. The validity and admissibility of the DNA report are matters to be determined during the trial. At this stage, the Court is only required to assess the material tentatively, and deeper appreciation of evidence is not permitted. Therefore, the



negative DNA report does not render the prosecution's case unbelievable. The delay in lodging the FIR has been sufficiently explained by the Complainant, who attempted to resolve the matter through local elders before approaching the court. This delay does not undermine the credibility of the allegations, especially in cases involving sensitive and personal matters such as sexual assault within the family. The allegations against the Applicant are of a heinous nature, involving the commission of zina with his own daughter. Such offences are not only grave under the law but also have severe societal implications. The need to protect the victim and society outweighs the Applicant's right to bail. The Applicant's release at this stage may jeopardize the integrity of the judicial process and the safety of the victim. The Applicant's previous bail applications have been dismissed by both the Sessions Court and this Honorable Court. There is no new material on record to warrant a different conclusion.



6. Undoubtedly, the considerations for granting pre-arrest bail differ significantly from those for post-arrest bail, particularly concerning additional grounds such as "humiliation", "harassment", "mala fides", "ulterior motives", and the "intention to disgrace or dishonor". However, once this Court has thoroughly and exhaustively examined the merits of the case while deciding the Applicant's pre-arrest bail application, it cannot adopt a contrary view on the same merits unless new grounds emerge that warrant further inquiry into the Applicant's guilt. In similar circumstances, in the case of *Muhammad Khan v. The State* (2005 P.Cr.L.J. 1797), the learned Lahore High Court observed that "it is well-settled that if pre-arrest bail is declined on merits and not merely due to the absence of mala fides, then post-arrest bail cannot be granted either". A similar stance was taken in the case of *Mian Saghir Ahmed and*

another v. The State (2005 P.Cr.L.J. 654), reinforcing this principle. The case laws cited by the learned counsel for the Applicant are not applicable to the present matter, as they are distinguishable from the facts and circumstances of this case.

7. For the reasons stated above, the present bail application submitted on behalf of the Applicant, being devoid of substantive merit, is hereby dismissed. It is expressly clarified that the observations and conclusions rendered in this order are strictly limited to the disposal of the present bail application and do not constitute an opinion on the merits of the case. These remarks shall not be interpreted as prejudicing the rights, claims, or defenses of either party—prosecution or defense—during the trial proceedings. The trial Court shall adjudicate the matter independently, uninfluenced by any findings articulated herein, and solely based on evidence adduced and legal principles applicable at the appropriate stage.




JUDGE