

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-1626 of 2025

Applicant : Ali Ahmed through Mr. Muhammad Zakaria Baloch, Advocate.
Respondent : The State through Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General, Sindh.
Date of hearing : 02.03.2026.
Date of Order : 02.03.2026.

O R D E R.

RIAZAT ALI SAHAR, J:- Through instant bail application, the above named applicant/accused seeks post-arrest bail in Crime No.57/2025 registered at Police Station Bhan Saeedabad, District Jamshoro for the offence under sections 375-A, 376, 365-B PPC. Earlier, bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-II, Jamshoro at Kotri vide orders dated 18.11.2025.

2. Brief facts of the prosecution case, as set out in the FIR are that on 16.04.2025 at about 10:00 p.m., the complainant/victim Anoosha alleged that co-accused Toufique Panhwar and Rafique Panhwar came to her house, forcibly pulled her outside and abducted her on a motorcycle. It is alleged that she was taken to different places where initially the said co-accused subjected her to zina and thereafter she was taken to village Rind, where the present applicant/accused Ali Ahmed as well as his son Waheed allegedly committed zina with her on more than one occasion against her will. The victim was subsequently rescued and produced before the Magistrate where her statement under Section 164 Cr.P.C. was recorded wherein she fully implicated the present applicant/accused. The victim was also medically examined and investigation was carried out by the police. The applicant/accused was arrested and his earlier bail applications before the trial Court as well as before this Court were dismissed on merits.

3. Learned counsel for the applicant/accused contended that the applicant has been falsely implicated in the present case due to *mala fide* and previous enmity. He contended that the FIR was lodged with an

unexplained delay of about four days, which creates serious doubt regarding the veracity of the prosecution story. Learned counsel further contended that no specific role was attributed to the present applicant in the FIR at the initial stage and that the medical report as well as the DNA analysis did not detect any semen stains or sperm fraction connecting the applicant with the alleged offence. He further contended that the statement of the complainant recorded under Section 164 Cr.P.C. contains material contradictions and was recorded in violation of legal requirements. According to learned counsel, the case of the applicant falls within the ambit of further inquiry under Section 497 (2) Cr.P.C. and therefore, he is entitled to the concession of bail. Lastly, learned counsel contended that the applicant has been behind bars since 12.05.2025 and his continued detention would amount to punishment before conviction. He, therefore, prayed for grant of bail to the applicant/accused.

4. Conversely, learned Assistant Prosecutor General Sindh opposed the bail application and contended that the applicant is specifically nominated in the prosecution case with a direct role of committing zina with the victim. He contended that the victim has consistently supported the prosecution version in her statement recorded under Section 164 Cr.P.C., which clearly implicates the applicant. Learned A.P.G. further contended that the medical evidence also lends support to the prosecution case as the hymen of the victim was found ruptured. He contended that the offence alleged is of a heinous nature falling within the prohibitory clause of Section 497 (1) Cr.P.C. therefore the applicant is not entitled to the concession of bail. He further pointed out that the earlier bail applications of the applicant have already been dismissed on merits by the trial Court as well as by this Court and no fresh or exceptional ground has been made out for reconsideration.

5. I have heard the learned counsel for the applicant, learned A.P.G. Sindh, and have carefully perused the record available at this stage.

6. The offences with which the applicant/accused has been booked fall within the prohibitory clause of Section 497(1) Cr.P.C. being punishable with death or imprisonment for life. In such cases, the grant of bail is not a rule and can only be allowed where the Court finds that there are no reasonable grounds to believe that the accused has committed the alleged offence or that the case calls for further inquiry within the meaning of Section 497 (2) Cr.P.C. A tentative assessment of the material placed on record reveals that the **applicant is specifically implicated**

by the victim in her statement recorded under Section 164 Cr.P.C. before the learned Magistrate. The said statement contains a clear and direct allegation that the present applicant/accused committed zina with her after she had been forcibly taken to the village of Rind. **At the bail stage, the statement of the victim recorded before a Magistrate carries significant evidentiary value and cannot be lightly brushed aside, particularly when it directly attributes a specific role to the accused with regard to commit zina.**

7. Furthermore, the medical examination of the victim conducted soon after the occurrence indicates that **her hymen was found ruptured**, which *prima facie* corroborates the allegation of **sexual assault**. Although, the learned counsel for the applicant has relied upon the alleged negative DNA report, it is well settled that absence of semen or DNA evidence by itself is not sufficient to discard the prosecution case at the bail stage, particularly in cases involving sexual offences where such evidence may not always be available due to various circumstances including lapse of time. In the case of *ATIF ZAREEF and others v. The STATE (P L D 2021 Supreme Court 550)*, the Honourable Supreme Court has held that:

8. *Lynn Enright in her book "Vagina - a Re-education" writes that we are taught from an early age that the hymen is associated with female purity. It is imagined as a sheath protecting the opening of the vagina. But this is false. The hymen has no biological function, it has been made into a symbol of virginity around the world. These inaccuracies are largely rooted in misogyny. Medical jurisprudence textbooks had previously prescribed certain tests of medical evaluation to determine prior virginity of an alleged rape victim, viz, assessment of the elasticity of her vaginal orifice by insertion of two fingers in her vagina and examination of the state of her genitals particularly the hymen. These textbooks had a significant impact on the adjudication of rape cases in the British India, as well as, in Pakistan and India post-independence. Our National Commission on the Status of Women (NCSW) has reported that crime of rape is viewed in the patriarchal context of sexual conduct of the survivor. Rape is also seen as a crime of lust and passion rather than a crime of control. Since then, much water has flown under the bridge, and today modern forensic science shuns the virginity test as being totally irrelevant to the sexual assault. The latest edition of the Modi's Textbook of Medical Jurisprudence and Toxicology states: "The pre-occupation of the medical community was to examine the hymenal status of the victim and determination of vaginal laxity to give opinion on past sexual history. It is time to get past the assessment of virginity and focus attention on appropriate medical care and psychological counseling. It will be illegal, irrelevant and wholly inappropriate to record a finding*

whether the victim was sexually active or not prior to and after the incident." The latest scientific research studies dispute accuracy of such virginity tests and opinions.⁷ The World Health Organization (WHO), the Office of the High Commissioner of the United Nations and the United Nations Entity for Gender Equality and the Empowerment of Women have stated in "Eliminating Virginity Testing: An Interagency Statement" that "virginity testing, also referred to as hymen, two-finger or pre vaginal examination... has no scientific merit or clinical indication" and "the appearance of a hymen is [also] not a reliable indication of intercourse and there is no known examination that can prove a history of vaginal intercourse." They have clarified that "like all human tissues, vaginal and hymenal tissue can be injured during trauma... [T]he purpose of the examination for sexual assault is to evaluate for and treat injuries ... not to assess virginity status."

12. A woman, whatever her sexual character or reputation may be, is entitled to equal protection of law. No one has the license to invade her person or violate her privacy on the ground of her alleged immoral character. Even if the victim of rape is accustomed to sexual intercourse, it is not determinative in a rape case; the real fact-in-issue is whether or not the accused committed rape on her. If the victim had lost her virginity earlier, it does not give to anyone the right to rape her. In a criminal trial relating to rape, it is the accused who is on trial and not the victim. The courts should also discontinue the use of painfully intrusive and inappropriate expressions, like "habituated to sex", "woman of easy virtue", "woman of loose moral character", and "non-virgin", for the alleged rape victims even if they find that the charge of rape is not proved against the accused. Such expressions are unconstitutional and illegal.

8. The contention regarding delay in lodging the FIR has also been considered. However, the record suggests that the complainant remained under unlawful confinement of the accused persons and was able to approach the authorities only after her release. In such circumstances, the delay stands reasonably explained and does not create any dent in the prosecution case at this stage. More so, as to the alleged contradictions in the statements of the complainant under Sections 161 and 164 Cr.P.C. is concerned, it also does not carry much weight at this stage, as determination of such contradictions requires deeper appreciation of evidence, which is not permissible while deciding a bail application. Similarly, the plea regarding alleged procedural irregularities in recording the statement under Section 164 Cr.P.C. involves questions of fact which can only be adjudicated upon during trial after recording evidence.

9. Another important aspect which cannot be ignored is that the applicant has already availed multiple opportunities for seeking bail. His pre-arrest bail as well as earlier post-arrest bail applications were

dismissed on merits by the learned trial Court vide order dated 30.05.2025 and thereafter his bail application was also dismissed by this Court vide order dated 16.09.2025 in Criminal Bail Application No.S-771/2025. **It is a settled principle of law that a subsequent bail application can only be entertained if a fresh ground or change in circumstances is shown.** In the present case, the applicant has failed to demonstrate any substantial change in circumstances warranting reconsideration of the matter. The allegations in the present case pertain to a grave and heinous offence involving abduction and **sexual assault** upon a woman, which not only violates the dignity and bodily independence of the victim but also affects the moral fabric of society. At this stage, the material available on record, including the consistent statement of the victim and the supporting medical evidence, provides sufficient grounds to tentatively connect the applicant with the commission of the alleged offence.

10. For what has been discussed above and upon tentative assessment of the record, I am of the considered opinion that there exist reasonable grounds to believe that the applicant/accused has committed the alleged offence and his case does not fall within the ambit of further inquiry as contemplated under Section 497 (2) Cr.P.C. Consequently, the instant bail application is **dismissed**. These are the reasons for my short order dated **02.03.2026**.

JUDGE