IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERBABD

Criminal Bail Application No. S-235 of 2026
[Nazar Ali v. The State]

Before:
JUSTICE RIAZAT ALI SAHAR

Applicant:	Nazar Ali through Mr. Shabir Hussain Memon, Advocate.
Respondent:	The State through Mr. Khalid Hussain Lakho, D.P.G. Sindh.
Date of Hearing:	11.03.2026
Date of Decision:	30.03.2026

ORDER

RIAZAT ALI SAHAR, J: - Through this instant criminal bail application under Section 497 Cr.P.C., the applicant seeks his release on post-arrest bail in Crime No. 175 of 2025, registered at P.S. Sehwan, for alleged offences under Sections 316, 376, 342, 109 and 34 PPC.

2. The brief background of the prosecution case, as set out in the FIR, is that on 26.07.2025 the complainant lodged a report with P.S. Sehwan alleging that his sister, namely Mst. Korri, was last seen in the company of co-accused Fayaz Depar on the night of 24.07.2025, and upon search it transpired that she had allegedly been taken to Sehwan where she was unlawfully confined in a house purportedly belonging to the present applicant and subjected to zina by the co-accused. It is further alleged that after the said occurrence her condition deteriorated and she was shifted to hospital, from where she was referred to Hyderabad but expired on the way. Consequently, the present case was registered against the accused persons including the applicant, who was subsequently

arrested and, after completion of investigation, challan has been submitted before the learned trial Court.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case with mala fide intention. He argued that no specific role of committing rape has been attributed to the applicant, as the principal allegation under Section 376 PPC rests solely upon co-accused Fayaz Depar, while the applicant has merely been roped in on the vague allegation of providing shelter. He further submitted that there is no independent or direct evidence to substantiate that the alleged occurrence took place in the house of the applicant, and the entire case is based on hearsay and uncorroborated statements. It was also contended that the medical evidence, including post-mortem report and viscera analysis, does not support the prosecution version and rather contradicts it, as no injury was found on the body of the deceased and the cause of death has been shown otherwise, thus making the case one of further inquiry within the meaning of Section 497(2) Cr.P.C. Learned counsel added that nothing incriminating has been recovered from the applicant, investigation has already been completed and challan has been submitted, therefore his further detention serves no useful purpose. He lastly argued that the applicant is a permanent resident, having no previous criminal record, and is ready to furnish solvent surety, hence he is entitled to concession of bail.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, vehemently opposed the grant of bail and contended that the applicant is nominated in the FIR with a specific role of facilitating the commission of a heinous offence by providing his house for the illegal confinement of the deceased, whereafter the principal offence of rape was committed. He argued that the offence falls within the prohibitory clause, carrying severe punishment, and sufficient material is available on record to connect the applicant with the commission of offence. It was further contended that the statements of prosecution witnesses

support the case of the prosecution and the role of the applicant cannot be termed as merely incidental at this stage. Learned D.P.G. further submitted that the death of the victim subsequent to the occurrence adds gravity to the matter, and the question of further inquiry can only be determined after recording evidence at trial. He lastly contended that if released on bail, the applicant may tamper with prosecution evidence or influence witnesses, therefore, he does not deserve the concession of bail.

5. Heard learned counsel for the applicant, learned Deputy Prosecutor General for the State, as well as learned counsel for the complainant, and perused the record with their able assistance. The question requiring tentative determination at this stage is whether, on the material presently available, the case of the applicant falls within the ambit of further inquiry under Section 497(2), Cr.P.C., or whether there exist reasonable grounds to believe that he is connected with the commission of the offences alleged in the FIR. The foundational facts and rival contentions noted above are borne out from the bail application and order sheet placed on record.

6. At the very outset, it is to be noted that the offences alleged against the applicant include Sections 376 and 316 PPC, read with Sections 342, 109 and 34 PPC, which, by their very nature, are grave, heinous and fall within the prohibitory clause of Section 497, Cr.P.C. It is by now well settled that in offences carrying capital punishment, imprisonment for life, or imprisonment for ten years, the concession of bail is not to be extended as a matter of course unless the Court, on tentative assessment, comes to the conclusion that the case calls for further inquiry or that no reasonable grounds exist to connect the accused with the offence. At bail stage, the Court is neither required to conduct a mini-trial nor to undertake deep appreciation of evidence in a manner which may prejudice either side; yet, where sufficient prima facie material is available connecting an accused with the occurrence, the extraordinary concession of post-arrest bail is ordinarily withheld.

7. The first limb of the argument advanced on behalf of the applicant is that the principal allegation of rape is attributed to co-accused Fayaz Depar and that the present applicant has been assigned only a subsidiary role of having allegedly provided his house. This contention, though attractive at first blush, does not persuade this Court. The FIR itself attributes to the present applicant a definite and specific role, namely, that the deceased was allegedly kept in his house at Lal Haveli, Khosa Mohalla, Sehwan, where she was illegally confined during the night and where the principal offence was committed. The allegation, therefore, is not of remote association or casual acquaintance; rather, it is that the premises of the present applicant constituted the very place of illegal confinement and occurrence. In offences involving unlawful confinement, sexual assault, and consequential death, facilitation of place, shelter and concealment cannot be lightly brushed aside as an innocuous or neutral circumstance. Whether such facilitation was intentional, knowing, active, or otherwise, is a matter which may be finally adjudged at trial, but tentatively the role assigned is sufficiently specific to connect him with the occurrence for purposes of bail.

8. The second submission is that at the most the case of the applicant would fall under Section 109 PPC and thus requires deeper appreciation. I am afraid, this argument also lacks force in the peculiar facts of the case. **Abetment, facilitation and common intention are seldom proved by direct evidence and ordinarily emerge from attending circumstances, conduct of the accused, situs of occurrence, and surrounding facts.** Where the allegation is that the victim was taken to a particular house, kept there throughout the night, subjected to sexual assault therein, and thereafter her condition became critical culminating in her death, the question whether the owner or occupant of such house was a passive bystander or an active facilitator is not to be resolved in his favour merely because he did not himself commit the principal physical act. **At this tentative stage, the existence of a specific role coupled with the gravity of the consequences is sufficient to disentitle the**

applicant from claiming that his case, by default, falls within further inquiry.

9. The third contention of learned counsel for the applicant is that no independent person from the locality has been cited and that the prosecution case is founded upon hearsay. This submission, again, does not substantially advance the case of the applicant. It is a matter of common experience that offences of sexual assault, more particularly where committed in secrecy, confinement, or within the four walls of a house, are seldom witnessed by independent persons. Likewise, persons from the locality are often reluctant to come forward in matters involving sexual violence and social stigma. Mere absence of independent private witnesses, therefore, is not by itself decisive at bail stage, particularly when the prosecution has otherwise collected material during investigation. Whether the prosecution shall ultimately be able to prove its case beyond reasonable doubt is a matter for trial; however, at this stage, the Court is only to see whether there are reasonable grounds to believe that the applicant is linked with the commission of offence. The absence of neighbourhood witnesses, standing alone, does not demolish the prosecution version.

10. The argument regarding "last seen" evidence has also been pressed into service on behalf of the applicant. There can be no cavil with the proposition that last-seen evidence is ordinarily regarded as a weak type of evidence unless corroborated by independent circumstances. However, in the present case, the prosecution is not relying on last-seen evidence simpliciter. The complainant's assertion that the deceased was seen in the company of co-accused Fayaz Depar is only one link in the chain. The further allegation is that upon search the complainant came to know that the deceased had been kept in the house of the present applicant, was subjected to rape there, her condition deteriorated thereafter, she was taken to hospital, and ultimately died. **Thus, the prosecution case is built upon a chain of interrelated circumstances: last seen with the principal accused, alleged confinement in the**

house of the present applicant, sexual assault, medical deterioration, hospitalisation, and death. Whether this chain shall ultimately inspire confidence is a matter for trial, but at the bail stage it cannot be said that the case rests on one isolated weak circumstance alone. The point of delay in lodging the FIR has also been raised. The alleged occurrence took place during the night intervening 24/25.07.2025, whereas the FIR was registered on 26.07.2025 at about 1300 hours. In ordinary crimes, unexplained delay may indeed cast a shadow on the prosecution story. However, the present matter pertains to an allegation of **sexual assault** against a middle-aged woman, followed by serious medical complications and eventual death. The record reflects that the victim was shifted to hospital, thereafter referred onward due to critical condition, died on the way, and legal formalities including post-mortem intervened before the complaint was formally lodged. In such circumstances, the time consumed in attending to the victim, dealing with the shock of death, shifting the dead body, and completion of medico-legal formalities cannot be treated as such an inordinate or fatal delay as would, by itself, create a presumption of false implication. The delay, therefore, at least tentatively, stands reasonably explained by the sequence of tragic events set out by the prosecution.

11. Considerable emphasis was laid by learned counsel for the applicant on the medical evidence, more particularly the submission that no external injury was found upon the body, that the cause of death has been shown as high blood pressure, and that the viscera report did not indicate poisoning. This Court is conscious of the principle that where medical evidence completely rules out the ocular account, the accused may be entitled to favourable consideration. Yet, the present case does not appear to be one of such outright exclusion. **Firstly**, absence of visible external injury does not necessarily negate sexual assault, particularly where the victim is a mature woman and the medico-legal aspects are to be examined comprehensively at trial in conjunction with the entire evidence. **Secondly**, the fact that poison was not detected in

the viscera does not advance the applicant's case because the prosecution is not attributing death to poisoning. **Thirdly**, even if the immediate cause of death is noted in medical papers in a certain manner, the prosecution case is that the victim's physical condition became critical after the alleged rape and unlawful confinement. Whether the death was a direct result of assault, shock, physiological collapse, pre-existing condition aggravated by the occurrence, or some other medically connected factor, is a matter requiring expert evaluation and full evidence before the trial Court. Such medical aspects cannot be conclusively interpreted in favour of the applicant at the bail stage.

12. The submission that there is no direct allegation that the applicant caused any injury so as to attract Section 316 PPC is likewise not sufficient for grant of bail. The exact applicability, scope and legal attraction of Section 316 PPC, vis-a-vis the role of each accused, is a matter to be thrashed out by the trial Court upon recording evidence. At this stage, where the prosecution case is that the deceased was illegally confined at the house of the applicant, the principal offence occurred there, her condition thereafter became serious, and she ultimately died, the Court cannot sever the applicant from the chain of events merely because the ultimate fatal consequence may require further legal classification. Misdescription, over-inclusion, or arguable applicability of one of the penal provisions does not automatically entitle an accused to bail when the core allegations under the remaining sections still stand and prima facie connect him with the occurrence.

13. The argument that nothing incriminating has been recovered from the possession of the applicant or from his house also does not carry the matter much further. In offences of this kind, recovery is not always the linchpin of the prosecution case. The absence of recovery may be relevant at trial for appraisal of evidentiary worth, but where the accusation is of providing premises for confinement and commission of sexual assault, the absence of physical recovery does not neutralise the specific role

alleged in the FIR and supported by the prosecution's investigative stance. Recovery is only one species of corroboration and not the sole determinant of culpability.

14. Similarly, the contention that the statement of co-accused before police has no evidentiary value is legally sound as an abstract proposition, yet it does not improve the case of the applicant at this stage. The impugned prosecution case is not resting exclusively upon the confessional or inculpatory statement of any co-accused before police. The FIR, surrounding circumstances, subsequent investigative material and the nominated role of the applicant collectively furnish tentative grounds connecting him with the occurrence. Therefore, even if one excludes from consideration any inadmissible statement of co-accused, the case against the applicant does not evaporate.

15. The submission that common intention or prior meeting of minds has not been established is again one that travels into the arena of deeper evidentiary appreciation. Common intention and abetment are matters usually inferred from conduct and circumstances. **When an allegation is made that the principal accused took the victim to Sehwan, the victim was kept in the house of the present applicant, remained confined there during the night, the offence of rape occurred there, and the victim's condition thereafter turned fatal, it cannot tentatively be said that the role of the applicant is so artificial, absurd or inherently improbable as to call for bail.** The question whether the applicant knowingly permitted his house to be used for the crime, whether he was present, absent, aware or unaware, and whether the necessary mens rea is established, are all questions of fact to be determined by the learned trial Court after recording evidence and testing the witnesses through cross-examination.

16. The plea that investigation has been completed and challan has been submitted, therefore no further custody is required, though relevant, is not by itself decisive. Completion of investigation is only one factor amongst many and cannot override

the gravity of accusation, nature of role, and existence of prima facie incriminating material. In heinous offences, especially those involving sexual violence and death, an accused does not earn automatic entitlement to bail merely because the challan has been submitted.

17. I am also not persuaded by the submission that refusal of bail would amount to pre-trial punishment. There is no denial of the settled principle that bail cannot be withheld as a measure of punishment, nor can incarceration before conviction be unnecessarily prolonged. At the same time, in cases falling within the prohibitory clause, where reasonable grounds exist to believe that the accused is connected with the commission of a heinous offence, detention pending trial is recognised by law and cannot be termed punitive per se. Of course, if the trial is unduly delayed for no fault attributable to the accused, or if the prosecution evidence materially weakens, the applicant would be at liberty to seek fresh consideration in accordance with law.

18. On tentative assessment of the entire material, I am of the considered view that the applicant has been assigned a specific role in the commission of the offence; the allegations against him are neither wholly vague nor inherently absurd; **the alleged occurrence is of grave nature involving sexual assault, unlawful confinement and subsequent death of the victim; and the points raised on behalf of the applicant pertain largely to appreciation of evidence, medical interpretation, and inferential liability, all of which are matters to be finally examined by the learned trial Court after recording evidence**. At this stage, I do not find the case of the applicant to be one of further inquiry within the meaning of Section 497 (2), Cr.P.C. For the foregoing reasons, this bail application is **dismissed.** However, learned trial Court is directed to conclude the case within a period of four months and submit compliance report through the Additional Registrar. The Senior Superintendent of Police, Jamshoro is also directed to ensure the attendance of the PWs before trial Court.

19. It is clarified that the observations made herein are purely tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE

Approved for reporting

Abdullahchanna/PS