

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2994 of 2025

Applicant : Muhammad Akram son of Waryam
through Mr. Adil Mustafa Arain,
Advocate

The State : Through Ms. Seema Zaidi,
Additional Prosecutor General,
Sindh

Date of hearing : 17.12.2025

Date of decision : 17.12.2025

ORDER

Jan Ali Junejo, J.- Through this application under Section 497 Cr.P.C., the Applicant seeks post-arrest bail in the above-mentioned case arising out of FIR No. 860/2024 registered at Police Station Surjani Town, Karachi, initially under Section 365-B PPC, with Sections 364-A and 109 PPC and Section 3(1) of the TIP law added during investigation. The learned Additional Sessions Judge-X, Karachi West (GBV Court), vide order dated 27.08.2025, declined bail to the Applicant. Being aggrieved, the Applicant has approached this Court.

2. The FIR was lodged on 20.07.2024 at 2215 hours by the complainant Muhammad Safdar, alleging that on 20.07.2024 at about 1230 hours his minor daughter Minahil went missing. Upon inquiry in the neighbourhood, the complainant allegedly learnt that his former tenant Saeed Ahmed had abducted the child with intent to commit rape. The FIR names Saeed Ahmed alone. During investigation, the police claim recovery of the minor from Ghotki and, inter alia, added Sections 364-A and 109 PPC and Section 3(1) TIP in the challan. The Applicant Muhammad Akram was subsequently arrested on 24.08.2024 on the basis of the co-accused's disclosure before police. The abductee's statement under Section 161 Cr.P.C. was recorded on 23.08.2024 and her statement under Section 164 Cr.P.C. was recorded six days thereafter, in which, according to the prosecution, she implicated the Applicant and others, alleging that she had been taken to Ghotki, maltreated and forced to work, and later recovered by police.

3. Learned counsel for the Applicant contends that the Applicant is innocent and has been falsely implicated with malafide and ulterior motives; that the FIR named only Saeed Ahmed and ascribed no role to the Applicant; that the Applicant's arrest is founded solely on the co-accused's disclosure before police, which is inadmissible in evidence under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984; that recovery of the abductee was not from the Applicant's possession, rather she reportedly approached police at Ghotki herself; that there are material contradictions inter se the recovery memo and statements under Sections 161/164 Cr.P.C.; that there are unexplained delays, of about 10 hours in lodging the FIR, two days in recording Section 161 Cr.P.C. statement after recovery, and six days for recording Section 164 Cr.P.C. statement, casting doubt on the prosecution version; that no direct or indirect corroborative material connects the Applicant; that the case calls for further inquiry within the ambit of Section 497(2) Cr.P.C.; that the Applicant is about 55 years of age, a resident of Karachi, not a previous convict, not required for further investigation as challan has been submitted; and that he undertakes to abide by any conditions. He prays that the Applicant be enlarged on post-arrest bail.

4. Conversely, learned Additional Prosecutor General opposes bail, submitting that the abductee is a minor; that she was taken from Karachi and recovered at Ghotki; that in her statement under Section 164 Cr.P.C. she unequivocally implicated the Applicant; that the offences under Sections 365-B and 364-A PPC fall within the prohibitory clause of Section 497(1) Cr.P.C., attracting the settled rule of caution against grant of bail in heinous offences when the prosecutrix directly implicates the accused; and that at the bail stage only a tentative assessment is permissible. She prays for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for both sides and undertaken a tentative assessment of the material available on record. It is settled that at the bail stage only tentative assessment is to be undertaken without delving into deeper appreciation of evidence. The guiding touchstone remains whether, on tentative view, the case against the accused appears to fall within the prohibitory clause without reasonable grounds for further inquiry, or whether there exist grounds within Section 497(2) Cr.P.C. warranting concession of bail. The burden is not to prove innocence but to demonstrate that the prosecution case, qua the applicant, is open to reasonable doubt at this stage on the available record. The FIR named only co-accused Saeed Ahmed and attributed to him the act of abduction with ulterior intent. No role was

ascribed to the present Applicant in the FIR. The Applicant's nomination surfaced during investigation on the strength of the co-accused's disclosure before police. Such disclosure, per se, is inadmissible against a co-accused under Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. The prosecution record placed before this Court does not presently reflect any recovery or discovery from the Applicant pursuant to such disclosure. Prima facie, therefore, the incrimination of the Applicant rests substantially on a statement of a co-accused before police and the subsequent Section 164 Cr.P.C. statement of the minor. As to recovery, the memo produced by the defence indicates that the child was encountered by a police party at Ghotki during patrol and that she herself approached the police mobile. The prosecution has not, at this stage, produced independent material showing recovery from the exclusive possession or premises of the present Applicant. Whether the child was, in fact, recovered from any custody attributable to the Applicant is a matter that would require evidence and trial.

6. The abductee's Section 164 Cr.P.C. statement bears significance; nevertheless, the record also reflects: (i) an unexplained delay of approximately two days between alleged recovery (21.08.2024) and recording of her Section 161 Cr.P.C. statement (23.08.2024), and (ii) a further six-day lapse before her Section 164 Cr.P.C. statement. While delay is not invariably fatal, such gaps, if not plausibly explained, may affect the weight to be tentatively attached at the bail stage, particularly where the initial FIR omitted the Applicant and where the recovery memo's tenor appears neutral to the Applicant's possession. The assessment remains tentative and confined to bail. The offences alleged, Sections 365-B and 364-A PPC, fall within the prohibitory clause and are undeniably grave. The law is well-settled that courts exercise restraint in granting bail where the prosecutrix or abductee directly implicates the accused. At the same time, the jurisprudence equally preserves the statutory space carved out by Section 497(2) Cr.P.C., which mandates the grant of bail where the case warrants further inquiry, even in offences falling within the prohibitory clause, provided the Court discerns reasonable grounds to doubt the applicant's specific involvement at this stage. The prohibitory clause does not eclipse the legislative command of further inquiry.

7. In the present matter, the following features cumulatively create doubt, qua the Applicant's specific nexus, warranting further inquiry: (a)

omission of the Applicant's name and role in the FIR; (b) subsequent nomination resting initially on a co-accused's police disclosure, inadmissible except for discovery; (c) recovery circumstances indicating that the child approached the police, with no clear showing of recovery from the Applicant's custody; (d) temporal gaps in recording the child's statements under Sections 161 and 164 Cr.P.C., currently unexplained; and (e) absence, at this stage, of independent corroborative material, such as CDR mapping, CCTV, travel logs, TIP proceedings compliant with law, or recovery linked to the Applicant, brought to the Court's notice during hearing.

8. The challan has been submitted, and the Applicant has remained in custody since 24.08.2024. The State has not asserted that the Applicant is required for further investigation, nor has it been suggested that any outstanding recovery depends on his continued detention. No prior criminal record has been brought on the record. In these circumstances, without entering into a detailed assessment of the evidence and while keeping in view the gravity of the accusation, I am of the tentative view that the case, qua the present Applicant, falls within the ambit of "further inquiry" as contemplated under Section 497(2), Cr.P.C. The Applicant, therefore, merits the concession of bail, subject to conditions aimed at ensuring his presence before the Court and safeguarding the prosecution's case.

9. For the foregoing reasons, this Criminal Bail Application is allowed. The Applicant Muhammad Akram son of Waryam is admitted to post-arrest bail in case arising out of FIR No. 860/2024, P.S. Surjani Town, Karachi, under Sections 365-B, 364-A, 109, 34 PPC and Section 3(1) TIP (as per challan), subject to his furnishing: Solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the trial Court. The observations herein are tentative and confined to the disposal of the bail application; they shall not prejudice or influence the trial Court in deciding the case on the basis of evidence led before it. These are the detailed reasons of the Short Order dated: 17-12-2025.

JUDGE