

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-1013 of 2025

Applicants : 1) Ameer Ali s/o Shoukat Ali,
2) Abdul Ghafoor s/o Darya Khan
(named in FIR as Abdullah)
Through Mr. Abdul Samad Shar, Advocate

Complainant : Sadam Hussain s/o Farman Ali Faqeer Shar

The State : *Through Syed Sardar Ali Shah, Addl. P.G*

Date of hearing : 13.02.2026
Date of Short order : 13.02.2026
Reasons recorded on : 17.02.2026

ORDER

KHALID HUSSAIN SHAHNI, J.— Applicants Ameer Ali and Abdul Ghafoor (named in the FIR as Abdullah) seek post-arrest bail in Crime No.244 of 2025 for offences punishable under Sections 377, 511 and 34 PPC, registered at Police Station Mirwah, District Khairpur. Their earlier request for bail was declined by the learned Additional Sessions Judge-IV (GBVC), Khairpur, vide order dated 02.10.2025.

2. The prosecution case, as set out in the FIR lodged on 30.08.2025 at about 1900 hours by the complainant Imdad Hussain, is that an occurrence allegedly took place on 27.08.2025 at about 1200 hours at the *Otaq* of accused Ameer Ahmed in Deh Jalbani. It is alleged that one Riaz Hussain invited the complainant to a gathering at the said *Otaq* where certain persons were present and, subsequently, Abdul Ghafoor (named as Abdullah in the FIR) and Ameer Ahmed also arrived. According to the complainant, tea was served to him by Abdul Ghafoor, after consuming which he became unconscious, and during that state an attempt was made to commit an unnatural offence with him, while the co-accused allegedly recorded the incident on a mobile phone. The FIR further narrates that upon regaining consciousness and offering resistance, the accused fled, whereafter the complainant returned home, disclosed the incident to his relatives, and thereafter approached the police for registration of the case under Sections 377, 511 and 34 PPC.

3. Learned counsel for the applicants contends that the applicants have been falsely implicated due to ulterior motives and that the prosecution story, on its face, suffers from material improbabilities and unexplained delay. It is argued that the FIR was lodged after three days of the alleged occurrence without any satisfactory explanation, despite the police station being situated at a relatively short distance from the place of incident, which *prima facie* indicates deliberation and consultation. Particular emphasis is laid on the asserted age of applicant Abdul Ghafoor, stated to be about 14/15 years, in contrast to the complainant who is stated to be about 30/35 years of age, to suggest inherent improbability in the prosecution narrative. Learned counsel further submits that no independent witness has been cited, that the case rests solely upon the complainant's version, and that the matter, at best, calls for further inquiry within the meaning of Section 497(2) Cr.P.C. It is also asserted that the applicants have no previous criminal record, are permanent residents of the locality, and there is no likelihood of abscondence or tampering with prosecution evidence. Reliance has been placed on (2016 SCMR 1523) and (2016 SCMR 1399) in support of the proposition that delay and lack of corroborative material at the initial stage may justify grant of bail.

4. On the previous date of hearing, learned counsel for the complainant sought adjournment; however, on the date fixed, he was called absent without prior intimation. Notwithstanding such absence, the learned Additional Prosecutor General appeared and advanced arguments on behalf of the State. In view of the nature of proceedings under Section 497 Cr.P.C, and after affording due opportunity of hearing to the prosecution, the matter was proceeded with on merits.

5. Learned Additional Prosecutor General opposed the application, contending that both applicants are specifically nominated in the FIR and have been assigned active roles in furtherance of common intention. It is submitted that the complainant was allegedly served intoxicating tea with the object of

committing sodomy and that the incident was recorded on a mobile device. Reference is made to the statements of prosecution witnesses recorded under Section 161 Cr.P.C, which, according to the State, corroborate the complainant's version. It is further argued that even though the charge is of attempt under Section 511 PPC read with Section 377 PPC, the nature of the allegation remains grave and requires cautious approach, particularly in matters concerning alleged sexual offences. The learned Addl. P.G maintains that the investigation has been conducted in accordance with law and that mere assertions of delay or improbability cannot, at this stage, displace the prosecution case. He prays that the application be dismissed or, in the alternative, that strict conditions be imposed to secure attendance and prevent misuse of concession of bail.

6. Having heard learned counsel for the applicants and the learned Additional Prosecutor General, and having tentatively examined the material placed on record, it is to be observed that at the stage of bail the Court is not required to undertake a deeper appreciation of evidence as would be done at trial. The inquiry is confined to determining whether there exist reasonable grounds for believing that the applicants have committed the alleged non-bailable offence, or whether the case falls within the ambit of further inquiry as contemplated by Section 497(2) Cr.P.C, keeping in view the nature of accusations, the material collected during investigation, and the statutory framework governing the grant of bail.

7. The governing principles for grant or refusal of bail are settled. At this stage, the Court is to tentatively assess whether the material collected during investigation discloses reasonable grounds for believing that the accused is guilty of a non-bailable offence, or whether the case calls for further inquiry within the meaning of Section 497(2) Cr.P.C. The offence alleged is under Sections 377, 511 and 34 PPC. Since the charge is of attempt under Section 511 PPC read with Section 377 PPC, the maximum punishment prescribed does not exceed five years' imprisonment; thus, the case does not fall within the prohibitory clause of

Section 497(1) Cr.P.C. In offences not falling within the prohibitory limb, grant of bail is a rule and refusal is an exception, subject always to the existence of reasonable grounds or other exceptional circumstances.

8. Examining the record on this touchstone, it is evident that the occurrence is stated to have taken place on 27.08.2025, whereas the FIR was lodged on 30.08.2025. The FIR itself reflects that after the alleged incident, the complainant returned home and disclosed the matter to his brother and cousin, yet no explanation of substance is offered for the delay of about three days in approaching the police. At the bail stage, unexplained delay in lodging the FIR is a relevant circumstance as it may prima facie indicate deliberation or consultation, though its ultimate effect is to be determined at trial. Furthermore, the prosecution case rests primarily upon the statement of the complainant; no independent eyewitness to the alleged act has been cited in the FIR, and the allegation that the incident was recorded on a mobile phone has not, at this stage, been supported by recovery or forensic material placed before the Court.

9. Another aspect which cannot be ignored at this tentative stage is the age disparity highlighted by the defence. While the precise age of applicant Abdul Ghafoor is a matter to be conclusively established during trial, the record presently indicates that he is stated to be about 14/15 years of age, whereas the complainant is stated to be about 30/35 years old. This circumstance, coupled with the absence of medical or independent corroborative material presently shown on record, creates a degree of doubt which, without touching the merits, brings the matter within the sphere of further inquiry under Section 497(2) Cr.P.C. Whether the prosecution ultimately succeeds in proving its case beyond reasonable doubt is a question to be determined after recording of evidence; however, for the limited purpose of bail, the material presently available does not disclose such reasonable grounds as would justify continued detention.

10. The reliance placed by learned counsel for the applicants on the cases of *Abdul Ghaffar v. The State & others* (2016 SCMR 1523) and *Muhammad*

Nauman Hanif v. The State & another (2016 SCMR 1399) also underscores the principle that where medical, forensic or other corroborative material is either lacking or inconclusive at the initial stage, and where delay or attendant circumstances create doubt, the matter may fall within the scope of further inquiry. Without expanding or reinterpreting the principles laid down therein, it may be observed that the ratio of such precedents supports the proposition that detention is not to be continued merely on the basis of accusation when the supporting material does not, at least tentatively, furnish reasonable grounds of guilt.

11. The constitutional guarantees embodied in Articles 9 and 14 of the Constitution require that deprivation of liberty must rest upon lawful authority and credible material. The presumption of innocence remains operative until guilt is established in accordance with law. While allegations of sexual offences are undoubtedly serious and require sensitive handling, the seriousness of the accusation alone cannot substitute the statutory requirement of reasonable grounds at the stage of bail. The Court must balance the societal interest in prosecution of crime with the individual's right to liberty, within the confines of Section 497 Cr.P.C.

12. In the present case, the cumulative effect of the unexplained delay in registration of the FIR, the absence of independent corroboration at this stage, the alleged recording of the incident without corresponding recovery shown on record, and the circumstances highlighted by the defence, collectively create a situation where further inquiry is warranted. These factors, when assessed tentatively and without expressing any opinion on the merits, are sufficient to extend the benefit contemplated by Section 497(2) Cr.P.C. to the applicants. Their continued incarceration, in the absence of exceptional circumstances such as likelihood of abscondence, tampering with evidence, or repetition of offence demonstrated from the record, would not be justified at this stage.

13. It is also pertinent to note that nothing has been brought on record to suggest that the applicants are previously convicted offenders or that they have misused any earlier concession of bail. The prosecution has not pointed to any material indicating a likelihood of their abscondence or of influencing prosecution witnesses. The mere apprehension of such possibilities, unsupported by concrete material, cannot be treated as a substitute for reasonable grounds within the meaning of Section 497(1) Cr.P.C. The principle that bail amounts to a change of custody and not an acquittal remains applicable, and the applicants shall remain subject to the jurisdiction of the trial court.

14. While the offences under Sections 377 and 511 PPC are undoubtedly serious in nature, the specific charge in the present case is of attempt, and the punishment prescribed does not attract the prohibitory clause. As held in the case of *Muhammad Tanveer v. The State & another* (PLD 2017 SC 733), in cases not falling within the prohibitory limb, refusal of bail must be supported by exceptional circumstances based on tangible material. No such exceptional circumstance has been demonstrated from the record presently available before this Court. The matter, therefore, squarely falls within the ambit of further inquiry as contemplated by Section 497(2) Cr.P.C.

15. For the foregoing reasons, this Court, through short order dated 13.02.2026, allowed the present criminal bail application and admitted applicants Ameer Ali and Abdul Ghafoor to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand) each and a P.R bond in the like amount to the satisfaction of the learned trial Court. These are the detailed reasons in support of the said short order. It is clarified that the observations made herein are purely tentative and shall not prejudice the trial, which shall proceed independently on the basis of evidence led before the learned trial Court.

J U D G E