

IN THE HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS
Crl. Bail Application No.S-48 of 2025

Applicant/ accused: Sharif s/o Murad Mangrio
Through Mr. Afzal Kareem Virk advocate.

The State: Through, Mr. Neel Parkash, D.P.G.

Complainant: Muhammad Hassan s/o Gul Muhammad Mangrio
Through Mr. Zulfiqar Ali Gajju advocate.

Date of hearing: 18.06.2025

Date of Order: 18.06.2025

ORDER.

Jan Ali Junejo, J. – This order addresses the post-arrest bail application filed by the Applicant, Sharif S/o Murad, in Crime No. 04 of 2025 registered under Sections 376, 377-B, and 511 PPC at Police Station Women Umerkot. The applicant’s earlier pre-arrest bail application (Criminal Bail Application No.66/2025) was dismissed by the learned Additional Sessions Judge-I, Umerkot, (hereinafter referred to as the “*Trial Court*”), and his post-arrest bail application (Criminal Bail Application No. 102/2025) was also dismissed by the learned trial Court vide Order dated 26.02.2025. The present post-arrest bail application is now before this Court, for consideration.

2. This case stems from FIR No. 04/2025, lodged by complainant Muhammad Hassan on January 28, 2025, at the Women Police Station Umerkot. Hassan alleges that on January 27, 2025, his 10-year-old daughter, Kainat, went to purchase groceries from a nearby shop owned by Sharif Mangrio. When Kainat failed to return after an extended period, Hassan, accompanied by witnesses Mooso Rajar and Javed Mangrio, proceeded to Sharif's shop at approximately 4:00 PM. Upon arrival, they heard Kainat’s cries emanating from the shop’s godown. Entering, they observed Sharif Mangrio fleeing the scene and discovered Kainat in a state of undress (shalwar removed). Kainat

immediately reported to her father and the witnesses that Sharif Mangrio had forcibly attempted to commit zina (rape) against her and fled upon their arrival. Hassan and the witnesses assisted Kainat in redressing and took her home. Following unsuccessful attempts to resolve the matter through local elders/notables, Hassan formally reported the incident, accusing Sharif Mangrio of the attempted rape of his minor daughter.

3. The learned counsel for the Applicant contends that the manner in which the incident is alleged to have occurred is highly doubtful, improbable, and does not strike to logic. He argues that there are no reasonable grounds to believe that the Applicant has committed the alleged offence, as the prosecution story is false, fabricated, and untrustworthy, lacking any independent or corroborative evidence. He emphasizes that the Applicant has no concern with the alleged incident and has been falsely implicated by the complainant due to mala fide intentions and ulterior motives. He further contends that, as per the FIR, neither the complainant nor any other person is an eyewitness to the incident, and nobody saw the Applicant removing the shalwar of the alleged victim. He submits that the entire story narrated in the FIR is hearsay, rendering the matter one of further inquiry under Section 497(2) Cr.P.C. He argues that the one-day delay in lodging the FIR, despite the police station being only 1 km away, remains unexplained. He contends that previous enmity motivated the complainant to register a false FIR. He further points out a conflict between the victim's statement under Section 161 Cr.P.C. and the FIR, particularly regarding the allegation of unnatural offence. He emphasizes that the medical history suggests a prior attempt to rape over two months, yet the victim remained silent. He further argues that the victim was not taken for medical examination immediately, and the Applicant is innocent and respectable, with no connection to the alleged offence. He asserts that the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., and the case, at best, requires further

inquiry, entitling the Applicant to bail. He concludes that the Applicant is in judicial custody, the final challan has been submitted, and no further investigation requires his physical custody. Lastly, the learned counsel prays for grant of post-arrest bail to the Applicant.

4. The learned counsel for the complainant, on the other hand, argues that the FIR and statements of the complainant and prosecution witnesses consistently and specifically implicate the Applicant, who was caught in the act of attempting to commit rape and unnatural offence with a minor girl. He emphasizes that the minor victim, in her Section 164 Cr.P.C. statement, has unequivocally implicated the Applicant and described the ordeal she suffered, including the removal of her shalwar and the Applicant's attempt to violate her. He contends that the one-day delay in lodging the FIR is inconsequential in cases of sexual offences against minors, as families often hesitate due to social stigma and concerns for their honor. He further argues that the medical and forensic evidence, including the recovery of the Applicant's semen from the victim's clothes and swabs, fully corroborates the prosecution case. He emphasizes that there is no plausible motive for the complainant to falsely implicate the Applicant in such a heinous crime, and all evidence collected so far supports the prosecution's version. Lastly the learned counsel prays for dismissal of bail.

5. The learned Deputy Prosecutor General, adopting the arguments of the complainant's counsel, contends that the nature of the offence is heinous and non-bailable, involving a minor victim who has consistently implicated the Applicant both in her initial statement and before the Magistrate under Section 164 Cr.P.C. He argues that the medical and DNA evidence clearly connects the Applicant to the offence, and the absence of marks of violence is not unusual given the victim's age and vulnerability. He emphasizes that the delay in lodging the FIR is adequately explained by the family's concern for their honor and does

not detract from the prosecution's case. He further contends that the Applicant has failed to establish any previous enmity or ulterior motive on the part of the complainant to falsely implicate him. He submits that, in view of the strong prima facie evidence and the gravity of the offence, the Applicant is not entitled to the concession of bail and the application deserves to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the applicant, the learned counsel for the complainant, and the learned Deputy Prosecutor General for the State. I have also carefully examined the material available on record and undertaken a tentative assessment, as permissible at the bail stage in accordance with established legal principles. The record, including the F.I.R., the statement of the victim recorded under Section 164, Cr.P.C., as well as the medical and forensic evidence, prima facie connects the applicant with the commission of the alleged offences. A perusal of the F.I.R. reveals that the applicant has been specifically nominated with a clear and active role in the attempted commission of rape upon the victim. The F.I.R. clearly states that the complainant, along with PWs Mooso Rajar and Javed Mangrio, heard the victim crying from inside the godown of the Applicant's shop. Upon entering, they discovered the victim in a naked state, weeping and crying for help, while the Applicant immediately fled the scene. This prompt flight upon being confronted further reinforces the prosecution's case concerning his involvement. The victim, in her statement recorded under Section 164 Cr.P.C., has fully and unequivocally implicated the Applicant with the commission of the offence. The consistency between the F.I.R. and the victim's statement, particularly regarding the Applicant's specific actions and his attempt to commit rape, lends significant credibility to the prosecution's version. The victim's tender age (10 years old) makes her statement particularly weighty, as it is less likely for a minor to fabricate such a serious accusation, especially one involving personal disgrace and trauma.

7. A perusal of the record further reveals that the ocular evidence furnished by the complainant and eyewitnesses, namely PWs Mooso Rajar and Javed Mangrio, corroborates the account of the victim. They witnessed the victim lying in a naked condition inside the godown of the applicant, weeping and raising cries. Thereafter, they assisted her in putting on her trousers (shalwar). This direct observation by independent witnesses at the scene of the crime provides strong circumstantial evidence linking the Applicant to the alleged incident. While there is no evidence of penetration by the Applicant in the private parts of the victim, the medico-legal certificate, DNA profiling report, and chemical report provide crucial forensic evidence. These reports clearly indicate that the swabs taken from the vagina of the victim, as well as the victim's shirt and trousers (shalwar), contained semen traces of the Applicant. The presence of the Applicant's semen on the victim's person and clothing, despite the absence of penetration, unequivocally demonstrates a clear attempt on the part of the Applicant to commit rape and an unnatural offence. The law recognizes that an attempt to commit an offence is punishable, and the forensic evidence in this case strongly supports the charge of attempt. The contention raised by the learned counsel for the Applicant regarding delay of one day in the registration of the F.I.R. is not sufficient to discard the prosecution's version. In cases of sexual assault, particularly involving minors, victims and their families often face immense social stigma and emotional distress. The delay can be attributed to the sensitive nature of the crime and the family's initial attempts to address the matter privately or to come to terms with the traumatic event. As rightly argued by the learned counsel for the Complainant and learned DPG, the honour of the victim and her family was at stake, which often leads to a delay in reporting such incidents. Such a delay, in the given circumstances, does not undermine the compelling evidence presented by the prosecution. In comparable situations, this Court held in Case of *Mansoor alias Gudo v. The State (2014 MLD 377)* that:

“Having heard the counsel for the respective parties and after meticulous examination of the available record, it is alleged that applicant committed rape with a minor baby of 9 years age; such incident was seen by the parents of minor victim, statement of baby Naureen was recorded, which discloses that the applicant forcibly committed rape with her. Besides this, the medical certificate discloses that victim was subjected to sexual intercourse, therefore, from the tentative assessment; reasonable grounds exists against the applicant, regarding his involvement in a case of capital punishment, falling within the Prohibitory Clause of subsection (1) of section 497, Cr.P.C. Regarding the delay of 5 days in F.I.R., it is suffice to say that; it is a settled proposition of law that delay per se is not sufficient for grant of bail; in cases of Zina, it is not believable that without any reason, one would go to shoulder such an allegation with reference to name and honour of his family, which no doubt will leave an impact upon the life and career of victim, in particular, hence plea of learned counsel with regard to delay in F.I.R. is of no help for applicant/ accused. Regarding chemical report it is pertinent to mention here that chemical report reflects that human semen was found on the shalwar of victim, therefore, this aspect also strengthen the case of prosecution. In the above circumstances, prima facie the applicant is linked with the case of capital punishment and he has failed to bring his case within purview of subsection (2) of section 497, Cr.P.C, thus is not entitled for the grant of post arrest bail”. The underlining is supplied.

8. Considering the specific nomination of the Applicant, the consistent and implicating statement of the victim under Section 164 Cr.P.C., the corroborative ocular evidence, and the compelling forensic evidence, this Court is of the considered view that there are reasonable grounds to believe that the Applicant has committed the alleged offences. The case does not fall within the ambit of further inquiry as contemplated under Section 497(2) Cr.P.C. The gravity of the offence, involving a minor victim and an attempt at a heinous crime, also weighs against the grant of bail at this stage.

9. In light of the foregoing discussion and the overwhelming evidence connecting the Applicant to the alleged offences, this Court finds no merit in the present bail application. The Applicant is not entitled to the concession of bail at this stage. Accordingly, the instant Criminal Bail Application is hereby **dismissed**. It is further clarified that the observations made herein are tentative in nature and are restricted solely to the adjudication of this bail application. The trial Court shall decide the case independently, on the basis of evidence brought before it, without being influenced by any observation made in this order.

JUDGE

Saleem

