

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Application No. S-151 of 2025

Applicants : 1. Asif Ali son of Ghulam Ali
2. Rafique son of Malang,
3. Ghulam Akber son of Shah Baigal,
Through Mr. Atta Hussain Chandio, Advocate

Complainant : Khabar S/O Ali Murad Rid
Through Syed Mujahid Ali Shah, Advocate

State : Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 11.08.2025

Date of order : 22.08.2025

AND

Criminal Bail Application No. S-392 of 2025

Applicant : Qamaruddin S/O Shah Baig Rid
Through Mr. Atta Hussain Chandio, Advocate

Complainant : Khabar S/O Ali Murad Rid
Through Syed Mujahid Ali Shah, Advocate

State : Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 11.08.2025

Date of order : 22.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –By this single order, above two bail applications are addressed. Cr. BA Application No.S-392 of 2025 is a post-arrest bail sought by applicant Qamaruddin, while Cr. BA No.S-151 of 2025 is a pre arrest bail filed by applicants Asif Ali, Rafique and Ghulam Akber, stemming out of a case bearing crime No. 96/2024, registered at Police Station Sorah, for offence under Sections 496, 496-A, 376, 392 and 365-B PPC read with Sections 3, 4, 5 of Sindh Child Marriage Restraint Act. Previously, the bail applications of above named accused were declined by the learned trial court by separate orders.

2. Concisely, facts enunciated from the FIR lodged by one Khabar on 22.09.2024 at 1100 hours are that he was having four daughters and his daughter namely Hurmat Khatoon was married with accused Qamaruddin according to Shariat-e-Muhammadi. On 16.8.2024, his daughter namely Izzat Khatoon aged about 9 years left the house at about 10:00 am. He along with his son Bakht Ali and brother-in-law Deedar left the house, saw and identified accused Qamaruddin

solemnizing marriage with his daughter Izzat and Moulvi Muhammad Nawaz Jamro was reciting Nikkah, where Abdul Ghani witness was sitting. They returned back, however, daughter Izzat Khatoon misplaced. His wife Mst. Shamna filed an application before the Sessions Judge on 21.09.2024, whereby Accused Qamaruddin produced his daughter Izzat before the Court; however, learned Court sent Izzat to Darul Aman Sukkur. Consequent upon; case was registered *inter alia* on above facts.

3. The learned advocate for the applicant/accused vehemently argued that there is about 1 month and 6 days delay in lodging of FIR without plausible explanation, which shows that complainant lodged this FIR with due deliberation and consultation. He contended that in fact on 16.8.2024, alleged victim Izzat Khatoon and applicant Qamaruddin contracted love marriage with their own accord and alleged victim Izzat Khatoon sworn such affidavit of free will. Not only this, but the couple filed Criminal Miscellaneous Appl. No 3849/2024 before the learned Sessions court Khairpur for protection, which was transferred to Additional Sessions Judge-IV Khairpur, same was allowed and order of protection was passed on 11.09.2024. He argued that prior to instant FIR, complainant had filed Cr.Misc App U/S 22-A, 22-B Cr.P.C for registration of FIR against applicant/accused, stating therein that the applicant Qamaruddin kidnapped his daughter from house, but the complainant deviating from such assertions stated in the instant FIR that the victim has left his house when he along with witnesses went out from house, saw that the applicant/accused was solemnizing marriage with the alleged victim, hence the prosecution case hinges on two different versions; therefore, false implication of applicant/accused could not be ruled out. Learned counsel further argued that prior to registration of FIR, a Cr. Misc. Application No.3643/2024 filed by the complainant for registration of FIR was also dismissed by the Court of learned 3rd Additional Sessions Judge Khairpur with observation that his daughter Izzat Khatoon had contracted love marriage with accused Qamaruddin. He emphasized that on 21.09.2024, the applicant Qamaruddin along with alleged victim appeared before the Sessions court Khairpur, where she admitted that she had contracted marriage according to shariah Muhammadi before justice of peace Thari Mirwah by way of free will affidavit, despite that court issued directions to SHO PS Sorah for registration of instant FIR. He submitted that learned Sessions court sent the wife of applicant Qamaruddin to Dar ul Aman Sukkur without her consent, whereafter FIR was registered, applicant Qamaruddin arrested and subsequently victim was pressurized by her parents; such fact compelled her to record statement u/s 164

Cr.P.C and she turned down from her earlier statements, which she recorded before learned Courts. The learned advocate argued that the FIR was registered for offence under section 3,4,5 Child Marriage Restraint Act and 496 PPC at PS Sorah, but it is surprising to note that marriage was performed within the jurisdiction of Mirwah. He contended that medical board was constituted to determine the age of victim and according to such report, she was aged about 17 years and that medical report is in negative and not supporting the version of 164 Cr.P.C statement of victim. The learned counsel submitted that even DNA report is not supporting version of victim and that the pre-arrest bail of accused Asif, Rafique and Ghulam Akber was confirmed by the Court of learned 4th Additional Sessions judge Khairpur. He argued that all the witnesses are close relatives of complainant, they are setup and hostile and their evidence is not reliable and trustworthy. He contended that on 22.01.2025, alleged victim with mala fide intention recorded her statement U/S 164 Cr.P.C in which she made dishonest improvements by stating that on the day of incident, six accused persons kidnapped her, brought into a jungle, all accused committed rape and threatened her. The learned advocate emphasized that there are major contradiction between the FIR and 164 CrPC statement of complainant, which creates serious doubt in the prudent mind and makes the case of prosecution highly doubtful. He argued that the case has been challaned and applicant Qamaruddin is already in jail, therefore he is no more required for further investigation. He submitted that it is well settled principle of law that benefit of doubt, if established, can be extended even at bail stage. The counsel contended that complainant lodged false FIR against innocent accused persons with mala fide intentions and ulterior motives and that from the above facts and circumstances, the case of the present applicant/accused falls within the ambit of further enquiry. The learned advocate particularly emphasized that applicant has contracted the love marriage, as per ossification test she was 17 years of age, while the 164 Cr.P.C statement, B-Form and other documents showing her age to be 09 years. He emphasized that applicants Asif, Rafiq, Ghulam Akber were admitted to pre arrest bail, but on the basis of statement of alleged victim, some penal sections were added, whereby their anticipatory bail was declined. Learned counsel referred no objection raised by the complainant in the court and prayed for post and pre arrest bail to the applicants.

4. The learned DPG for the State vehemently opposed the bail applications on several crucial grounds. He argued that Mst. Hurmat, the first wife of applicant Qamaruddin is the sister of victim Izzat Khatoon, making this a case

where the accused has married his sister-in-law (*Saali*), which constitutes a serious matrimonial offence. He contended that Section 366-A PPC is applicable along with section 365-B, 376 and sections 3, 4 of Child Marriage Restraint Act, all of which fall within the prohibitory clauses of Section 497 Cr.P.C. The learned DPG emphasized that the victim is a minor child of 9 years age as per the birth certificate and other documentary evidence, making this a case of child marriage and child abuse which are heinous crimes against society. He argued that the accused has committed multiple serious offences including kidnapping and abducting a minor girl with intent to compel her for marriage under Section 365-B PPC, which carries punishment of life imprisonment, rape under Section 376 PPC carrying punishment of death or imprisonment from 10-25 years, and procuration of minor girl under Section 366-A PPC, which carries punishment up to 10 years. The learned DPG contended that there are reasonable grounds to believe that the accused has committed these offences as evidenced by the FIR, recovery of the victim from accused's custody, and the victim's statement under Section 164 Cr.P.C. He argued that the case involves kidnapping/abduction of a minor child, alleged commission of rape upon her, and forced marriage, all of which constitute serious crimes against the person and dignity of a minor. The DPG submitted that grant of bail in such heinous offences would be against public policy and protection of children. He argued that the no objection by complainant is not acceptable in cases of non-compoundable offences, particularly those falling within the prohibitory clauses of Section 497 Cr.P.C. He contended that the victim did not appear to record her no objection personally and that compromise in such serious crimes cannot override the statutory bar. The learned DPG emphasized that these offences are crimes against society and not merely private wrongs, therefore no private compromise can absolve the accused. The learned DPG submitted that the case of applicants Asif and two others is distinguishable from the applicant Qamaruddin, as they may have had secondary roles while the applicant Qamaruddin is the main perpetrator who allegedly solemnized marriage with the minor victim. He argued that each bail application must be decided on its own merits based on the specific role of the accused. He contended that the accused Qamaruddin is not entitled to bail; however, conceded for pre arrest bail to applicant Asif and two others.

5. Before delving into the case who are seeking pre-arrest bail, it is imperative to discuss the Bail application filed by applicant Qamaruddin. On the merits of the case, a comprehensive analysis of the FIR, the victim's statement under Section 164 Cr.P.C., and the admitted Nikahnama reveals compelling

evidence against the applicant Qamaruddin that substantiates the charges leveled against him. The FIR registered on 22.09.2024 presents a clear and coherent narrative wherein the complainant Khabar specifically alleges that on 16.08.2024 at about 10:00 am, he along with his son Bakht Ali Rid and brother-in-law Deedar witnessed the accused Qamaruddin Rid solemnizing Nikkah with his nine years daughter Izzat Khatoon; Moulvi Muhammad Nawaz Jamro reciting the Nikkah and Abdul Ghani sitting as witness. The promptness in lodging the FIR, though delayed by about one month and six days, does not necessarily indicate fabrication as the Supreme Court has held that delay or promptness in lodging of F.I.R. shall not in all cases lead to an inference about truth or otherwise of the case set up in the F.I.R, and that the F.I.R is not a substantive piece of evidence, but its significance for the purpose of seeking corroboration or contradictions cannot be denied. The specific details mentioned in the FIR regarding the place of occurrence, the identities of witnesses, and the circumstances surrounding the alleged kidnapping and marriage ceremony provide a factual foundation that demonstrates the complainant's direct knowledge of the events rather than a concocted story. The fact that the complainant was able to identify specific individuals including Moulvi Muhammad Nawaz Jamro, performing the ceremony and the witness present at the scene adds credibility to the prosecution's version of events. The victim's statement under Section 164 Cr.P.C., despite its later variations and contradictions, initially supported the prosecution case by corroborating the essential elements of the offences charged against the accused. The evidentiary value of statements recorded under Section 164 Cr.P.C. is well-established in Pakistani jurisprudence, where such statements hold significant weight as they are recorded before a judicial officer under oath and are considered substantive evidence that can be relied upon for corroboration or contradiction purposes. Even where a victim subsequently resiles from their earlier statement, the courts have consistently held that the statement recorded under Section 164 Cr.P.C. retains its evidentiary value and can be used to establish the prosecution case, particularly when corroborated by other evidence on record. The most damaging piece of evidence against the applicant is the admitted existence of the Nikahnama between him and the victim Izzat Khatoon, which the accused himself produced before the Sessions Court during proceedings on 21.09.2024. A Nikahnama is a public document that carries immense evidentiary value in matrimonial matters and determines the terms and conditions of marriage between parties. The Nikahnama, being a registered document under Section 5 of the Muslim Family Laws Ordinance, 1961, holds the status of primary evidence in matrimonial matters and cannot be bypassed on the basis of mere oral

testimony. The fact that the accused produced this document himself before the court demonstrates his admission of having solemnized marriage with the victim, which directly establishes the actus reus of the offences under Sections 365-B, 366-A PPC and the Child Marriage Restraint Act. The circumstances surrounding the execution of this Nikahnama are particularly incriminating as they occurred after the alleged kidnapping/abduction of the minor victim, thereby establishing the requisite mens rea for the charged offences. The documentary evidence in the form of the Nikahnama, coupled with the recovery of the victim from the accused's custody and her subsequent placement in Dar-ul-Aman by judicial order, creates a strong evidential foundation that connects the accused with the commission of serious crimes against a minor child. The prosecution case is further strengthened by the fact that the accused was already married to the victim's sister Hurmat Khatoon, making the victim his sister-in-law (Saali), which adds another dimension to the criminality of his conduct and demonstrates a pattern of behavior that exploits familial relationships. The convergence of these pieces of evidence, the detailed FIR naming specific witnesses and circumstances, the victim's initial statement under Section 164 Cr.P.C., the admitted Nikahnama produced by the accused himself, and the recovery of the minor victim from his custody, creates reasonable grounds to believe that the accused has committed the offences charged against him, thereby satisfying the evidentiary threshold required for refusing bail under the prohibitory clause of Section 497 Cr.P.C

6. Now, moving to the legal position of the case, before discussing it is imperative to provide the penal sections for better understanding; Section 365-B PPC provides that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine. The essential ingredients are kidnapping or abduction of a woman must occur and the intent must be that she may be compelled to marry against her will, or forced or seduced to illicit intercourse. The punishment prescribed is imprisonment for life and fine. Section 376 PPC states that whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty five years and shall also be liable to fine. The essential elements of rape under Section 375 include sexual intercourse by a man with a woman under circumstances falling under against her will, without her consent, with consent obtained by fear of death or hurt, with consent when she believes the man is her husband, and critically, with

or without consent when she is under sixteen years of age. The punishment is death or imprisonment ranging from 10 to 25 years and fine. Section 366-A PPC states that whoever by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine. Under the Sindh Child Marriage Restraint Act 2013, Sections 3 and 4 prescribe imprisonment from 2 to 3 years for contracting or facilitating child marriage.

7. The prohibitory clause of Section 497(1) Cr.P.C. states that an accused shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. In the present case, Sections 365-B, 376, and 366-A PPC, all fall within this prohibitory clause.

8. As such in the case of **Mahiuddin Ahmed v. Nabin Muhammad & others (PLD 1964 Dacca 225)**, the Court underscored the foundational importance of age in such prosecutions, holding that:

"2. Age of a girl in a prosecution under section 363 or section 366 of the Pakistan Penal Code is of fundamental importance and it seems to me that the learned Magistrate has relied on the statement made by the girl to the effect that she is major. The learned Magistrate ought to have made an enquiry about the age in a case of this nature.

9. In the case of **Kamala Prosad Bhartaharjee and another v. Emperor (A I R 1941 Cal. 315)**, it was held that in order to prove the charge of kidnapping the prosecution must prove that the person kidnapped was under 16 years of age. It is true that the burden of proof lies on the prosecution but it is also a duty of the Magistrate to give adequate opportunity of proving the age..."

10. Similarly, in **Abdul Hamid v. The State (PLD 1962 (W.P.) Karachi 886)**, the Hon'ble Court clarified the application of Sections 361 and 366 PPC in the context of a minor voluntarily accompanying the accused, holding as under:

In my view, on the evidence of the girl herself, the appellant did take her away with himself. Mst. Rubab was still under the guardianship of her parents when she was sent to the hotel where she met the appellant. Although the appellant did not induce her or tell her to go with him and although the girl says that she went with the appellant herself and that she told him to take her away; still the appellant did take her to Korangi in consequence. The appellant, therefore, is liable as he took the girl away to Korangi.

It is immaterial that he did so after the girl had requested him to do so. The offence lies in taking a minor from lawful guardianship. It would be still an offence if a person takes a minor at the minor's request as long as the minor is taken while she is yet in the keeping or custody of a lawful guardian. The nearest parallel case reported is In re, Khalandar Saheb (A I R 1955 Andhra 59). There we find the following remarks:-

"(9) It is next to be considered whether the accused took the minor or enticed her to go with him. It is contended that the accused did not take her or entice her, but she voluntarily went with him. There is an essential distinction between the two words 'take' and 'entice'. The mental attitude of the minor is not of relevance in the case of taking. 'The word 'take' means to cause to go, to escort, or to get into possession. When the accused took the minor with him, whether she was willing or not, the fact of taking was complete and the condition was satisfied. The word 'entice' involves an idea of inducement by exciting hope or desire in the other. One does not entice another unless -the latter attempted to do a thing which she or he would not otherwise do. The juxtaposition of these two words makes it clear that the act of taking is complete (sic) when the accused takes her with him or accompanies her in the ordinary sense of the term, irrespective of her mental attitude. So, it is clear that, when the accused took the girl along with him, he was 'taking' her out of the father's custody within the meaning of the section."

I am in respectful agreement with the observations made above and I find that the appellant was rightly convicted for an offence under section 366, P. P. C..."

11. In **Fozia Petrik v. The State (2009 MLD 1350)**, the Court reiterated that:

"Plea of accused that alleged abductee had gone with her own consent with him, was of no consequence in view of minority of abductee... she was minor within the meaning of S.361, P.P.C... if any female under the age of 16 years is taken away from the lawful guardian without consent of such guardian amounts to kidnapping... no matter whether she has consented to such kidnapping or not..."

12. In **Noor Dad v. The State (1996 MLD 822)**, it was held that:

"Discretion of abductee to elope and her consent to a marriage with accused and eventually to sexual intercourse might not entail legal consequences suitable to accused... her age is only 15 years and thus under Ordinance VII of 1979 she having not attained the age of 16 is not an adult."

13. Similarly, in **Abdul Khaliq v. The State (1986 SCMR 35)**, the Hon'ble Supreme Court held:

"...The petitioner was charged with the abduction of Shamshad Kausar a minor girl about 12 years of age and thereafter commission of Zina-bil Jabr with her which are punishable under sections 11 and 10(3) of the Ordinance. The

petitioner had in reality kidnapped Mst. Shamshad Kausar from a lawful guardianship she being a minor and was taken away to Murree Hills. She was also subjected to Zina-bil-Jabr.

The arguments with regard to consent would not be of any avail to the petitioner as the victim of the crime was of age specified in the definition of "kidnapping from lawful guardianship" in section 361, P.P.C. namely, sixteen years and the said section according to the law is to be read for discovering the definition of kidnapping for purpose of section 11 of the Ordinance..."

14. In **Alfat Bibi & another v. The State (PLD 1972 Lahore 121)**, the Court opined:

"...If the statement of the abductee of 15 years of age exonerating the accused on the basis of her marriage after kidnapping/abduction, is allowed to be used for quashment of prosecution under section 363/366, P. P. C. it may mean a general license for kidnapping girls approaching their 15th year of age. In other words, it will mean an indirect amendment in at least half a dozen punishing provisions in the penal law of Pakistan and also in other laws.

Even if the marriage is proved it does not absolve the so called husband (and others) of the offence committed by him qua his alleged wife and the marriage, for example the consent to marriage (which may or may not be valid under Muslim law) in these circumstances does not absolve the kidnapper of an offence under section 363, P. P. C. The consent, as to marriage of an abductee also, would be open to so many factual and legal questions involving mental and physical faculties.

It is to be noticed that the consent of a minor female in matter of her abduction is no defence in a prosecution for offence under section 366, P. P. C.

The fact, that the alleged abductees have been allowed to go with their abductors in collateral proceedings in the nature of habeas corpus, cannot and does not prove that the accused persons have not committed any offence either qua the kidnapping and/or abduction of, and qua the marriage with, the female minors..."

15. In **Mujahid Khan v. The State (2021 MLD 1683)**, a comprehensive discussion of rape, kidnapping, and minority concluded with findings based on the medical and NADRA records indicating the victim was **fourteen years old**, thus rendering her consent to sexual relations and marriage irrelevant. The Court stated:

"Even otherwise the issue of consent would become marginalized if the victim was underage... reasonable grounds have been shown linking the applicant with the cited offence/s punishable with imprisonment of ten years or more, in respect whereof the law disapproves of the concession of bail."

16. I would also like to concur the case of **Muhammad Azam Vs. Muhammad Iqbal & others** (PLD 1984 Supreme Court 95) Shariat Court, wherein the Honorable Shariat Court was pleased to held that;

“...Legal implications-Previous admissions of prosecutrix in favour of valid marriage if proved as voluntarily made particularly when before a Court of law but in proceedings which were normal and genuine, held, will have important bearing-False evidence of previous admissions created by accused in farcical proceedings, if proved, held further, might be used against accused in negation of plea of valid marriage as permissible under S. 8, Evidence Act, 1872-Trial Court to examine (in circumstances of each case) as to why effort was made to solemnize marriage in secrecy, at odd place in presence of outsiders to exclusion of near ones particularly in cases of "minor" girl of such tender age that child Marriage Restraint Act, 1929 provided as crime-Laws on various levels of age for marriage and exercise of option of puberty desired to be examined by Court.”

17. These judicial pronouncements collectively affirm the settled legal principle that where the abductee is a minor, her consent is of no legal consequence. Statements under Sections 161 or 164 Cr.P.C, a Nikahnama, or an affidavit, howsoever voluntarily made, cannot override the statutory protection accorded to minors, nor can such documents be used as a defense to vitiate the allegations of kidnapping, particularly where recovery is made from the custody of the accused and age is medically and officially shown to be below the legal threshold. Prima facie, the provisions of Sections 365-B PPC and Section 3 of the Prevention of Trafficking in Persons Act, 2018 appear to be attracted. The contention that the girl contracted marriage out of her own free will may carry weight at trial, however, at this stage, her minority makes her alleged consent legally immaterial in light of the precedents cited above, especially when the offence falls within the prohibitory clause.

18. The applicant argues that co-accused were granted bail but this fails because each bail application must be decided on its own merits based on the role of specific accused. Applicant Qamaruddin is the primary accused who allegedly solemnized marriage with the victim while co-accused may have secondary roles. In number of cases, it was held that compromise in non-compoundable offences cannot override the legal bar. The alleged victim did not appear personally to record any no objection and the offences under Sections 365-B, 376, 366-A are heinous crimes against society.

19. The applicant argues conflicting evidence about age but this creates doubt about actual age without negating charges. Even if victim is 17

years, other elements of rape under Section 375 may still apply. While the applicant argues the case requires "further inquiry" under Section 497(2) Cr.P.C., several factors militate against this including direct nomination in FIR, recovery of victim from accused's custody, victim's statement under Section 164 Cr.P.C, and circumstantial evidence of marriage ceremony.

20. After careful consideration of the facts, law, and precedents, this Court finds that the prohibitory clause is applicable as the accused is charged under Sections 365-B, 376, and 366-A PPC, all carrying punishment of death, life imprisonment, or ten years imprisonment, thus falling squarely within the prohibitory clause of Section 497(1) Cr.P.C.. There are reasonable grounds to believe that the accused is guilty of the alleged offences based on direct nomination in FIR, recovery of victim from accused's custody, victim's statement under Section 164 Cr.P.C, and circumstantial evidence of marriage ceremony. The heinous nature of crime involves kidnapping/abduction of a minor, alleged rape of a child, child marriage against law and public policy, and serious threat to society and protection of minors. The applicant has failed to establish exceptional circumstances that would warrant bail despite falling within prohibitory clause. Grant of bail would be against public interest and protection of vulnerable children. The applicant appears to be previously married to victim's sister showing pattern of conduct. The complainant's no objection cannot override the statutory prohibition under Section 497 Cr.P.C. when charges fall within prohibitory clause. As held in Tariq Bashir's case, bail in such offences is not a right but concession/grace. In view of the serious nature of charges, prohibitory clause application, and reasonable grounds connecting the accused with heinous offences punishable with life imprisonment and death, this Criminal Bail Application No. S-339/2025 is hereby dismissed. The applicant shall remain in judicial custody to face trial according to law. Office is directed to send copy of this order to the trial court for information and expeditious disposal of the case.

21. Now moving towards the pre arrest bail sought by applicants Asif and two others, the fundamental legal principle in bail applications requires individual assessment of each accused's specific role and circumstances. While the primary accused Qamaruddin was directly implicated in the FIR as the person who allegedly solemnized marriage with the minor victim, the present applicants were not named in the FIR lodged on 22.09.2024. Their involvement was disclosed only through the victim's statement under Section 164 Cr.P.C recorded on 31.10.2024, about one month and nine days after the FIR registration.

22. The victim's 164 CrPC statement alleges that on 16.08.2024, six accused persons kidnapped her, brought her to a jungle, and all committed rape against her. However, this version significantly contradicts the original FIR narrative, which described witnessing a marriage ceremony with specific individuals present, making no mention of multiple accused or jungle location. The evidence against the present applicants appears substantially weaker compared to the primary accused. Unlike Qamaruddin, who was directly named in the FIR and against whom a Nikahnama existed as documentary evidence, the present applicants' alleged involvement rests solely on the victim's belated 164 CrPC statement, which itself contains significant inconsistencies with the original complaint. The Supreme Court in *Abdul Malik v. The State* established that "reasonable grounds" must appeal to a reasonable person for connecting the accused with the crime, being of higher import than mere suspicion. The prosecution must provide tangible evidence that, if left un rebutted, may lead to inference of guilt, though deeper appreciation is not required at bail stage.

23. Several factors militate against finding reasonable grounds against the present applicants: The delay of over a month in disclosing the applicants' names after FIR suggests afterthought rather than genuine recollection. The stark contradiction between the FIR (describing a witnessed marriage ceremony) and the 164 CrPC statement (alleging gang rape in a jungle by six persons) creates serious doubt about the prosecution's version. Such fundamental inconsistencies, as established in various precedents, can be considered even at the bail stage when assessing reasonable grounds. Even accepting the prosecution's version at face value, the present applicants appear to have played, at most, a secondary role compared to the primary accused who allegedly solemnized the marriage. The courts have consistently held that co-accused in different roles require individual assessment for bail purposes. The fact that these applicants were initially granted pre-arrest bail by the 4th Additional Sessions Judge, Khairpur, before additional sections were added to the challan, indicates that their original involvement was not considered sufficiently serious to warrant custody. The subsequent addition of sections 376 and 392 PPC appears to be based primarily on the delayed 164 CrPC statement rather than fresh evidence. In cases involving multiple accused with varying degrees of participation, the courts have recognized that bail considerations differ for each accused based on their specific role. The Supreme Court has held that where the case against co-accused is distinguishable from the main perpetrator, different bail outcomes are justified. The present applicants' case is distinguishable from Qamaruddin's on several grounds: they were not

named in the original FIR, no direct evidence connects them to the marriage ceremony, their alleged involvement emerged only through a contradictory statement made months later, and no documentary evidence implicates them specifically.

24. Where the evidence against accused persons raises doubts rather than reasonable grounds, Section 497(2) Cr.P.C provides for bail if the case requires further inquiry. The present case exhibits classic indicators of requiring further inquiry including material contradictions in prosecution's case, delayed disclosure of crucial facts, lack of corroborative evidence against present applicants, and significant temporal gaps in the narrative. The contradictory versions presented by the prosecution from a witnessed marriage ceremony to gang rape in jungle necessitate detailed investigation to establish the true facts. This uncertainty works in favor of the applicants under the further inquiry provision

25. While offences against minors are serious and deserve stern treatment, the fundamental principle remains that bail should not be withheld as punishment where reasonable grounds are lacking. The Supreme Court in Manzoor's case emphasized that there is no moral compulsion to keep people in jail merely on allegations unless reasonable grounds exist to disclose their complicity. The present applicants' case lacks the compelling evidence present against the primary accused, making their continued detention potentially unjust if the case ultimately requires further inquiry.

26. After careful consideration of the distinctive circumstances, evidence, and legal principles applicable to the present applicants, this Court finds that their case is materially different from that of the primary accused Qamaruddin. The absence of their names in the original FIR, the lack of direct evidence connecting them to the alleged offences, the significant contradictions in the prosecution's case, and their apparent secondary role (if any) in the alleged incident distinguish their position substantially .

27. While the offences charged fall within the prohibitory clause, the evidence against these specific applicants does not meet the threshold of reasonable grounds required under Section 497(1) Cr.P.C. Their case appears to require further inquiry under Section 497(2) CrPC, particularly given the material contradictions and delayed disclosure of their involvement.

28. Therefore, Criminal Bail Application No. S-151 of 2025 is **allowed**. The applicants Asif S/o Ghulam Ali, Rafique S/o Malang, and Ghulam Akber S/o Shah Baig are on interim pre-arrest bail vide order dated 24.02.2025, which is confirmed under same terms and conditions. Accused to cooperative with investigation and join trial.

JUDGE