

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-312 of 2025

Applicant : Gulab son of Abdul Khalique Mirani,  
Through Mr. Achar Khan Gabol, Advocate

Complainant : Abdul Naeem son of Abdul Razzaque Thaheem,  
Through Mr. Shabbir Ali Bozdar, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 22.08.2025  
Date of order : 03.09.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J** – Applicant Gulab, seeks post-arrest bail in a case bearing crime No. 53 of 2024, for offences under Section 377 & 377-A of the Pakistan Penal Code, registered at Police Station Jarwar, district Ghotki. His applications for pre-arrest and post-arrest bail were dismissed by the learned trial court on 22 November 2024 and 28 December 2024 respectively.

2. The incident, as recorded in the FIR, occurred late at night when the complainant's fourteen years son, who had gone to purchase biscuits, did not return home. Concerned, the complainant and his two nephews set out to search for him and, upon reaching the compound of Shah Latif School, discovered the applicant allegedly in the act of committing sodomy upon the minor while another unknown individual stood by. Both accused managed to escape upon being discovered. The complainant immediately took his injured son for a medico-legal examination, which resulted in the recovery of human semen from an anal swab of the victim. The FIR was lodged about two hours after the incident.

3. During the hearing of this bail application, the learned defense counsel forcefully argued that applicant had been falsely implicated owing to an ongoing dispute over immovable property. He highlighted the alleged mala fide behind the case, calling attention to the two-hour delay in the registration of the

FIR despite the police station's proximity, contending that the unexplained delay bore the imprint of motivation and falsehood. The defense counsel further submitted that the chemical/DNA report had excluded the applicant's genetic material, thereby undermining the prosecution's case and making it one of further inquiry under Section 497(2), Cr.P.C. He also attacked the independence of the ocular testimony, emphasizing that all eyewitnesses were close relatives of the victim, thus lacking impartiality. Lastly, he contended that, given the minimum statutory punishment under Section 377, PPC is two years' imprisonment, the case warranted the grant of bail. Reliance was placed on various judgments, including 2025 YLR 1223, 2016 SCMR 1399, 2016 SCMR 1523, and 2020 P.Cr.L.J 31, where bail was granted in cases involving delays in FIR registration, negative DNA reports, and lack of independent witnesses, with greater reliance placed on scientific evidence as the touchstone for further inquiry.

4. Conversely, learned counsel for the complainant rebutted the submissions and maintained that the FIR's lodging within two hours was entirely reasonable, given the circumstances of the night-time search and the imperative need to secure urgent medical help for the child. He stressed that the identification of the applicant under torchlight by the victim's father and nephews was corroborated by their consistent statements recorded under Section 161, Cr.P.C. He further contended that the positive medico-legal certificate established the occurrence of "carnal intercourse against the order of nature," and that offences under Sections 377 and 377-A, PPC, especially when perpetrated on minors, are among the gravest, militating against the grant of bail regardless of the absence of independent witnesses in such circumstances.

5. The Deputy Prosecutor General added that there was no indication of any ill will or ulterior motive on the complainant's part. He brought to the Court's attention the binding precedent that negative DNA results at the bail stage

do not vitiate positive medico-legal findings, according to the jurisprudence of the Supreme Court of Pakistan, scientific evidence such as DNA is corroborative in nature and not conclusive for the purposes of bail, especially where there are other strong pieces of evidence such as ocular accounts and a positive MLC. He also emphasized that Section 377-A PPC, where the victim is a minor, prescribes a mandatory minimum term of seven years, underlining the gravity of the crime and public interest in ensuring trial proceedings.

6. After considering the detailed arguments advanced by both sides, the material available on record, and the case law cited, this Court find, the prosecution has successfully established a prima facie case under Sections 377 and 377-A, PPC, supported by compelling medical findings and credible, contemporaneous ocular evidence. The minor delay before registration of the FIR was justifiably explained by the need for immediate medical care for the victim and did not raise doubts about the veracity of the prosecution's story. While the eyewitnesses were related to the victim, their version of events, given under the stress of a traumatic occurrence, appeared reliable and was not shaken on material points. The negative DNA report in this case, in view of the current Supreme Court authorities, did not override the positive medical evidence or the weight of consistent eyewitness accounts; at the bail stage, such scientific reports provide corroboration but are not independently determinative of guilt or innocence.

7. The Court further noted that the case law relied upon by the applicant's counsel—such as *2016 SCMR 1523*, pertained to circumstances where the prosecution case was bereft of medical support, suffered from glaring contradictions, or the alleged offence did not trigger the prohibitory provisions of Section 497, Cr.P.C. In contrast, the present case was distinguished by the immediacy and credibility of the complaints, the strength of the medical findings, the age and vulnerability of the victim, and the grave nature of the allegations.

Where the allegations relate to aggravated sexual abuse of a child, the heinousness of the offence, the imperative of safeguarding minors, and the real risks of tampering with the evidence or fleeing justice, militate strongly against the grant of bail. Therefore, this Court is not persuaded that any exceptional circumstance existed to warrant the concession of bail. In the light of foregoing circumstances *prima facie* applicant has failed to make out case for further inquiry as envisaged under section 497(2) Cr.P.C. Accordingly, bail application stands dismissed, and the authorities cited for the applicant were found inapposite to the facts at hand and thus distinguished.

**J U D G E**