

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-1260 of 2025

Applicant : Darwesh Ali s/o Mohib Ali, Shahani
Through Mr. Achar Khan Gabol, Advocate

Complainant : Mst. Aameena Khatoon w/o Ghulam Sarwar, Shahani
Through Mr. Naseem Ahmed Maitlo, Advocate

The State : Through Mr. Imran Mubeen, Addl. P.G

Date of hearing : 19.02.2026
Date of order : 27.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Darwesh Ali, seeks the concession of post-arrest bail in Crime No.121 of 2024, for offences under Sections 365-B, 376 and 34, Pakistan Penal Code, 1860, registered at Police Station Ranipur, District Khairpur, his earlier application having been declined by the learned Additional Sessions Judge-IV (Special Court for Gender Based Violence), Khairpur, vide order dated 24.11.2025.

2. The gravamen of the prosecution case, as articulated in FIR No.121 of 2024 registered on 20.09.2024 at 1300 hours at Police Station Ranipur, is that on 14.08.2024 at about 2100 hours, accused Muhammad Nawaz Kalwar, accompanied by two unknown associates, all allegedly armed with pistols, trespassed into the complainant's house and, on the strength of arms, abducted the complainant's sister, Mst. Shameelan @ Shumaila, aged about 31/32 years, in a white-colored GLI motor car. It is alleged that despite an immediate approach to the police, registration of the FIR was initially refused, compelling the complainant to invoke the jurisdiction of the learned Justice of Peace under Sections 22-A and 22-B Cr.P.C, whereupon, pursuant to an order dated 19.09.2024 passed by the learned Additional Sessions Judge, Gambat, the FIR was eventually lodged on 20.09.2024. It further transpires that, upon purported recovery

of the abductee, her statement under Section 164 Cr.P.C was recorded on 25.09.2024 before the learned 1st Civil Judge & Judicial Magistrate, Khairpur, wherein for the first time the present applicant, Darwesh Ali Shahani, and co-accused Ahad Ali Shahani were nominated by name with specific allegations of having, while armed, participated in the abduction, kept the victim in unlawful confinement at an undisclosed location in Punjab, and having committed repeated acts of *zina-bil-jabr* with her for three to four consecutive days; in consequence, Section 376(ii) PPC was subsequently inserted. Upon completion of investigation, a final report under Section 173 Cr.P.C was submitted before the competent Court in which the Investigating Officer, having opined that the accusations against the present applicant and co-accused Ahad Ali were not substantiated, placed their names in Column No.II and purported to release them under Section 169 Cr.P.C; however, the learned trial Court, not concurring with such conclusion, took cognizance against them.

3. Learned counsel for the applicant contends, in essence, that the applicant is a victim of false implication, allegedly on account of deep-seated murderous enmity between the parties, inasmuch as the complainant's maternal nephew, Rashid Ali, stands convicted in FIR No.138 of 2023, registered at Police Station Sobhodero under Sections 302, 148 and 149 PPC, at the instance of the sister of co-accused Ahad Ali, and that the instant case has been engineered as a pressure tactic to procure a compromise in the said murder case; that there is an inordinate and unexplained delay of thirty-seven days (one month and six days) in lodging the FIR, notwithstanding that the distance between the locus in quo and the police station is merely about half a kilometer; that the applicant is conspicuously not named either in the FIR, in the application

under Sections 22-A and 22-B Cr.P.C, or in the statement of the alleged victim under Section 161 Cr.P.C, and his name surfaced for the first time only in the statement under Section 164 Cr.P.C, recorded about seven days after registration of FIR and one and a half months after the alleged occurrence, despite admitted proximity and long-standing acquaintance between the parties; that the alleged abductee was not recovered from the possession of any accused but rather appeared at the police station in a wholly unexplained and casual manner on 25.09.2024; that all cited prosecution witnesses are close relatives of the complainant, rendering them interested witnesses whose testimony, in the absence of independent corroboration, cannot safely be relied upon; that the DNA Test Report, issued by the Forensic & Molecular Biology Laboratory, Liaquat University of Medical and Health Sciences, Jamshoro, is categorically negative, detecting no male DNA profile, no semen stain and no sperm fraction either on the vaginal swab samples or on the clothing of the alleged victim, thereby scientifically negating the allegation of repeated sexual assault by three men over several days; that the Investigating Officer, having conducted what is described as an independent and impartial probe, recommended the applicant's case for Column-II treatment and his release under Section 169 Cr.P.C; that the Call Data Record (CDR) allegedly demonstrates that the applicant was not present at or near the scene at the material time; that the complainant and her sisters are alleged to be habitual litigants who have, on broadly similar accusations, lodged multiple false FIRs against various persons of the locality; and that a video statement of Abdul Hakeem Shahani, brother-in-law of the alleged victim, preserved on a sealed USB, characterizes the complainant and her husband Ghulam Sarwar as

blackmailers and fraudsters. Learned counsel, in aid of his contentions, has cited, *inter alia*, (2016 SCMR 1523), (2017 SCMR 366), (2020 YLR-N 46), (2019 MLD 1168) and (2013 MLD 1115).

4. Conversely, learned Additional Prosecutor General, duly assisted by learned counsel for the complainant, has opposed the application with vehemence, arguing that the applicant stands specifically implicated in a grave occurrence of armed abduction and sexual assault upon a woman; that the offences under Sections 365-B and 376 PPC, carrying punishments of imprisonment for life and death respectively, indubitably attract the prohibitory clause of Section 497(1) Cr.P.C; that the victim, in her statement under Section 164 Cr.P.C, recorded before a Magistrate, has furnished a detailed ocular account, specifically naming the applicant and ascribing to him a concrete role in the abduction, confinement and repeated commission of *zina-bil-jabr*; that the delay in registration of the FIR stands plausibly explained by the initial refusal of the police to register the case, compelling recourse to the Justice of Peace; that no less than three previous bail petitions have been dismissed on merits by competent fora, including this Court; and that the plea of previous enmity operates as a double-edged sword. It is further urged that the ocular account, particularly the victim's Section 164 Cr.P.C statement, constitutes sufficient material, at this stage, to attract the bar contained in the prohibitory clause, notwithstanding the DNA report.

5. I have heard the learned counsel for the parties at considerable length and have perused the available material with the degree of tentative scrutiny permissible at the bail stage. In order to better appreciate the factual substratum, the complainant, namely Mst. Ameena Khatoon (who is also the mother of the alleged victim), was summoned and appeared

with her counsel. Upon seeking and being granted permission to address the Court, she stated, inter alia, that the complainant's family and the applicant's family reside in the same locality, maintain visiting terms and cordial neighborly relations, and that her sister, Mst. Shameelan @ Shumaila, had informed her that three persons committed *zina* with her.

6. As shall be delineated presently, the medical and forensic scientific material placed on record singularly fails to lend support to, much less corroborate, the allegation of *zina-bil-jabr* thus articulated.

7. At the threshold, it is apposite to restate the controlling legal framework. The offences under Sections 365-B and 376, PPC, are non-bailable and fall within the prohibitory clause of Section 497(1) Cr.P.C, the former being punishable with imprisonment for life and the latter with death. The general rule, in such like matters, is that an accused shall not be enlarged on bail where there appear reasonable grounds for believing that he has committed such offence. However, the proviso to Section 497(1) and, more significantly, Section 497(2) Cr.P.C, carve out an exception: where the material, on tentative appraisal, does not furnish reasonable grounds for believing that the accused has committed the alleged non-bailable offence but, instead, discloses sufficient grounds for further inquiry into his guilt, the accused is to be released on bail as of right. The operative expression "*if there appear reasonable grounds for believing*" in Section 497(1) makes it abundantly clear that the prohibitory clause is not of inexorable or automatic application; the Court is required to undertake a circumscribed yet meaningful assessment of the material to ascertain whether the threshold of reasonable belief has been crossed, bearing in mind that at the bail stage the Court must eschew deeper appreciation of evidence or embarking upon a mini-trial.

8. The first and, in my view, pivotal consideration is the stark and irreconcilable contradiction between the verbal allegation of repeated *zina-bil-jabr* by three adult males over three to four days and the unimpeached forensic scientific evidence. The alleged victim, in her Section 164 Cr.P.C statement recorded on 25.09.2024, alleged that the applicant, along with co-accused Muhammad Nawaz Kalwar and Ahad Ali, armed with weapons, forcibly abducted her, transported her to Punjab, kept her at an undisclosed place and committed repeated acts of *zina-bil-jabr* with her for three to four days.

9. The DNA Test Report, issued by the Forensic & Molecular Biology Laboratory, Liaquat University of Medical and Health Sciences, Jamshoro, employing modern extraction, amplification and analysis techniques, categorically records that no male DNA profile, no semen stain and no sperm fraction was detected on the three vaginal swab samples and the clothing of the victim (Item 1.0 and Item 2.0). The result is not expressed in equivocal, inconclusive or contaminated terms; it is a clear and affirmative scientific finding of total absence of male biological material on or within the victim's body and clothing. In the face of a specific narrative of repeated sexual intercourse by three males over a period of several days, the statistical probability of complete absence of any male DNA or semen, on both swabs and clothing, is so attenuated that it seriously undermines, at the least tentatively, the veracity of the allegation.

10. The exculpatory value of this categorical negative DNA report is further accentuated when juxtaposed with the statement of the mother of the alleged victim, who reiterated that her sister claimed to have been subjected to *zina* by three persons, yet the most sophisticated forensic

examination could not identify even a vestigial trace of male biological material. Mere repetition of grave oral accusations, however emotionally charged, cannot, in the face of contrary scientific evidence, suffice to create “reasonable grounds for believing” guilt in the sense in which that phrase is employed in the prohibitory clause. The superior Courts have consistently accorded determinative weight to negative DNA or medical findings in similar contexts, treating such material as a factor favoring the grant of bail under Section 497(2), Cr.P.C.

11. It is correct that the DNA report records certain caveats, namely that absence of semen or sperm fraction does not, per se, exclude the possibility of use of condoms, delay in medical examination or improper preservation of evidentiary material and that the clothes worn by the victim at the time of the incident were not made available for analysis. However, these caveats, properly construed, do not dilute the exculpatory force of the negative finding; rather, they expose serious lapses and omissions in the investigation and evidence-collection process. Any failure of the prosecuting agency to promptly conduct a medico-legal examination, to secure and preserve clothing or to maintain the chain of custody for forensic purposes, cannot, at the bail stage, be visited upon the accused; the benefit of such deficiencies must accrue in favor of the applicant and not be converted into an argument to neutralize the very scientific evidence the prosecution elected to invoke.

12. The *second* significant aspect is the delayed and belated nomination of the present applicant. The FIR, lodged on 20.09.2024, names only one accused, Muhammad Nawaz Kalwar, along with two unidentified persons. The applicant’s name surfaces for the first time in the Section 164 Cr.P.C statement of the alleged victim, recorded on 25.09.2024, five days after registration of the FIR and about one month and eleven days after the

occurrence of 14.08.2024. It is not in dispute that the applicant and the complainant's family reside in the same locality, are well acquainted and, as admitted by the complainant herself, were on visiting terms. In such circumstances, the omission to name the applicant at the earliest available opportunity, whether in the application under Sections 22-A and 22-B Cr.P.C, in the FIR itself, or in the initial Section 161, Cr.P.C. statement of the alleged victim, assumes considerable significance. The belated introduction of a well-known neighbor, after an appreciable interlude and in the backdrop of admitted murderous enmity, reasonably lends itself, at this tentative stage, to an inference of possible deliberation, consultation or afterthought.

13. *Thirdly*, the delay of thirty-seven days in lodging the FIR, viewed in the contextual matrix of the case, cannot be brushed aside as innocuous. The alleged incident is one of armed abduction at gunpoint from within the complainant's own residence at 2100 hours, yet the FIR saw the light of day only on 20.09.2024 at 1300 hours, despite the police station being merely around half a kilometer away. While the prosecution seeks to justify the delay by referring to initial refusal by police and consequent recourse to the Justice of Peace, this explanation, even if provisionally accepted, does not satisfactorily account for the complainant's failure to promptly approach law enforcement immediately after the alleged occurrence. In a case of alleged violent abduction from the sanctity of one's home, the natural human reaction would ordinarily be to rush to the nearest police station forthwith. The jurisprudence of the superior Courts has consistently recognized that unexplained or inadequately explained delay in lodging the FIR, particularly in serious offences, is a circumstance that may cast doubt on the prosecution story and, when coupled with other infirmities, strengthens the case for further inquiry.

14. The *fourth* salient feature is the inconsistency between the alleged victim's initial version and her subsequent statement, coupled with the investigative conclusion embodied in the Column-II placement. The material on record reveals that the alleged victim appeared at the police station on 25.09.2024 and furnished a statement under Section 161 Cr.P.C, in which the applicant was not implicated. Subsequently, in her Section 164 Cr.P.C statement, she attributed to the applicant a direct role in the commission of *zina*, jointly with two others, spread over three to four days, yet she omitted to describe the manner of her release from the alleged captivity. These internal inconsistencies, in conjunction with the Investigating Officer's reasoned conclusion that the allegations against the applicant and co-accused could not be substantiated, leading to their names being placed in Column No.II and their release recommended under Section 169 Cr.P.C, constitute a serious dent in the prosecution case, at least for purposes of bail. The Investigating Officer's report further notes that the complainant and her family have a documented history of lodging similar complaints against various persons of the locality, suggestive of a pattern of habitual litigation. While Column-II placement is not binding upon the Court, the Supreme Court has held that where the Investigating Officer, on appraisal of the entire material, concludes that the case of an accused is one of further inquiry, the same, read with Section 497(2) Cr.P.C, entitles such accused to favorable consideration for bail.

15. The statement of the complainant/mother of the alleged victim also has its own legal resonance. Her admission of cordial visiting terms and neighborly relations between the parties *prima facie* undermines the notion of the applicant being a hostile outsider and, when juxtaposed with

the admitted murderous enmity arising out of FIR No.138 of 2023 (wherein the complainant's nephew stands convicted for murder of a relative of co-accused Ahad Ali), lends substantial support to the defense plea that the present case may be a collateral device to secure leverage for a compromise in the said murder case. Her reiteration that her sister merely stated that three persons committed zina with her, without supporting medico-legal or forensic corroboration, does not, in itself, suffice to meet the "reasonable grounds for believing" standard erected by the prohibitory clause.

16. Furthermore, the defense has produced, on the record, copies of multiple FIRs lodged by the complainant and her sisters against different individuals of the locality on substantially similar allegations. This, read with the Investigating Officer's finding that the complainant's family are habitual complainants and alleged blackmailers, as well as the video statement of Abdul Hakeem Shahani describing the complainant and her husband as blackmailers and fraudsters, constitutes a relevant though not conclusive circumstance bearing on the credibility and bona fides of the present prosecution. While the ultimate veracity of these allegations is for the trial Court to determine, at this tentative stage, the documented pattern of recurrent similar complaints emanating from the same source creates serious reservations about the genuineness of the instant accusation.

17. It is also not without significance that all prosecution witnesses nominated in the challan are closely related to the complainant. While settled law does not disqualify related or interested witnesses per se, courts have consistently insisted upon cautious scrutiny of such testimony and, where possible, independent corroboration, particularly in serious

offences such as armed abduction and rape. In the present matter, there is a complete dearth of any independent or neutral witness, no resident of the locality, passerby, shopkeeper or disinterested third party has been cited to support the prosecution narrative. When this absence of independent corroboration is viewed in conjunction with the negative DNA report, Column-II treatment, and habitual complainant history, the cumulative effect materially weakens the prosecution case at this stage.

18. Learned counsel for the applicant has further relied upon the Call Data Record, which is said to show that the applicant was not present at or near the *locus in quo* at the relevant time of 2100 hours on 14.08.2024. While a definitive adjudication on the evidentiary value of the CDR must await trial, it nevertheless constitutes an additional supporting circumstance which, taken together with the other infirmities, tilts the balance towards further inquiry.

19. The prosecution's case against the applicant, stripped to its core, substantially hinges on the Section 164 Cr.P.C statement of the alleged victim. It is a settled principle of criminal jurisprudence that a statement recorded under Section 164 Cr.P.C is not substantive evidence; it is primarily a previous statement that may be used, at trial, for purposes of corroboration or contradiction of deposition recorded on oath in Court. It is equally well settled that, in the absence of independent and legally admissible corroboration, a conviction cannot ordinarily be founded solely upon such a statement. In the present context, the Section 164 Cr.P.C statement alleges repeated acts of *zina* over several days by three persons, but this assertion stands in direct conflict with the unequivocally negative DNA findings and is unsupported by any cogent medical evidence. In these circumstances, the uncorroborated and, to an extent,

scientifically contradicted Section 164 Cr.P.C statement cannot, by itself, safely be regarded as constituting “reasonable grounds for believing” that the applicant has committed the charged offence of *zina-bil-jabr* within the contemplation of Section 497(1), Cr.P.C.

20. It is correct that three earlier bail applications, including one before this Court, have been declined. However, the present application is distinguishable, both on account of the nature of relief previously sought and the emergence of new and material circumstances. The earlier order of this Court dated 24.04.2025, passed in Criminal Bail Application No. S-827 of 2024, pertained to pre-arrest bail under Section 498 Cr.P.C, which is governed by a different and more stringent threshold, primarily aimed at preventing misuse of process and ensuring cooperation with investigation, whereas the instant petition concerns post-arrest bail under Section 497 Cr.P.C, where the focus shifts to the sufficiency and quality of incriminating material. More importantly, the DNA Test Report, which now forms the linchpin of the applicant’s case, was either not available in its present form or was not canvassed before the earlier fora with the same degree of emphasis and analytical detail. The statement of the complainant/mother before this Court, acknowledging cordial relations and the nature of the allegation, constitutes an additional subsequent development. The cumulative effect of the negative DNA report, the Column-II recommendation, the complainant’s own admission regarding prior relations and enmity, the habitual complainant pattern, and the CDR material, taken together with the period of incarceration already undergone and the fact that the trial has yet to commence, demonstrably constitutes a material change in circumstances sufficient to justify a fresh and independent consideration of the applicant’s entitlement to bail.

21. On the conspectus of the foregoing, and without embarking upon a roving inquiry or delving into a deeper appreciation of evidence, it cannot be said, at this tentative stage, that the prosecution case against the applicant is free from reasonable doubt. On the contrary, the collective impact of the negative forensic report, delayed and belated nomination, unexplained FIR delay, investigative conclusions embodied in Column-II placement, absence of independent corroboration, documented pattern of prior similar complaints and the CDR material, undeniably brings the matter within the purview of “*further inquiry*” as envisaged by Section 497(2) Cr.P.C.

22. It bears reiteration that even in offences attracting the prohibitory clause of Section 497(1) Cr.P.C, the statutory mandate embodied in Section 497(2) remains fully operative: where the material, on a circumscribed yet meaningful appraisal, discloses sufficient grounds for further inquiry, the accused is entitled to bail as of right. In analogous contexts, the superior Courts have extended the concession of bail where, inter alia, the FIR was delayed, DNA/forensic reports were negative, medical evidence did not support the allegation of sexual assault, or the accused’s name appeared only belatedly or in Column No.II of the challan. These precedents underscore that an order of bail in such circumstances does not amount to an acquittal; it merely ensures that an individual whose guilt is yet to be established beyond reasonable doubt is not subjected to prolonged incarceration on the basis of materially doubtful evidence.

23. In view of the foregoing analysis, and without prejudice to the ultimate merits of the case, I am of the considered view that the applicant’s case squarely attracts the provisions of Section 497(2) Cr.P.C. The

applicant has, therefore, succeeded in making out a case for grant of post-arrest bail. Consequently, this Criminal Bail Application is allowed. The applicant, Darwesh Ali s/o Mohib Ali Shahani, is admitted to post-arrest bail in Crime No.121 of 2024, for offences under Sections 365-B, 376 and 34 PPC, registered at Police Station Ranipur, District Khairpur, subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a personal recognizance bond in the like amount to the satisfaction of the learned trial Court. The learned trial Court is directed to proceed with the trial with due expedition and to make an earnest endeavor to conclude the same preferably within a period of three (03) months from the date of receipt of a certified copy of this order, strictly uninfluenced by any tentative observation contained herein. It is expressly clarified that all observations made in this order are of a purely tentative character, confined exclusively to the adjudication of the bail application, and shall not prejudice the case of either party nor fetter the discretion of the learned trial Court, which shall decide the matter on the basis of evidence adduced before it and in accordance with law.

J U D G E