

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-1174 of 2025

Applicant : Bashir Ahmed through Mr. Shankar Lal Meghwar, Advocate.

Respondent : The State through Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.

Complainant : Muhammad Irfan through Mr. Qadir Bux Ghirano, Advocate.

Date of hearing : 25.02.2026.

Date of Order : 25.02.2026.

## **ORDER.**

**RIAZAT ALI SAHAR, J:-** Through instant bail application, the above named applicant/accused seeks post-arrest bail in Crime No.145/2024 registered at Police Station S.F. Rahu, District Badin for the offence under sections 302, 337-J, 377, 34, 377-B, 201 PPC. Earlier the bail plea of the applicant/accused was declined by the learned 2<sup>nd</sup> Additional Sessions Judge, Badin vide order dated 02.07.2025.

2. Brief facts of the prosecution case, as set out in FIR No.145/2024 registered at Police Station S.F. Rahu, District Badin, is that complainant Muhammad Irfan alleged that on 19.06.2024 at about 12:00 noon, his minor son Mujahid Ali, aged about 11/12 years, left the house and did not return. On 20.06.2024, information was received regarding recovery of a dead body from Sorhadi Minor, which was identified as that of the deceased. Post-mortem examination was conducted and the dead body was handed over to the complainant for burial. The FIR, however, was lodged on 31.07.2024, after a delay of approximately one month and thirteen days, wherein the present applicant along with co-accused was nominated on the allegation that they administered intoxicant to the

deceased, committed sodomy and thereafter murdered him and threw his body into the Minor.

3. During investigation, the applicant was initially released under Section 169 Cr.P.C., but subsequently arrested and sent up for trial on the basis of further statements of the complainant recorded on 14.03.2025 and 18.04.2025. The applicant is in custody since 24.09.2024 and the case has been challaned.

4. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated after due deliberation. He contended that the occurrence is admittedly unseen and there is no ocular account or last-seen evidence against the applicant. The FIR has been lodged with unexplained delay of more than one month, which creates serious doubt about the prosecution story. He further contended that the applicant was initially released under Section 169 Cr.P.C., demonstrating absence of sufficient material against him and his subsequent implication is based upon improved and contradictory further-statements of the complainant. Learned counsel contended that no recovery has been effected from the applicant, nor is there any scientific or DNA evidence connecting him with the alleged offence. He contended that the medical evidence does not specifically attribute culpability to the applicant. He further contended that despite lapse of considerable time and earlier directions of this Court, no prosecution witness has been examined and the applicant has remained behind bars for a substantial period. Learned counsel contended that the case, therefore, falls within the ambit of further inquiry under Section 497(2) Cr.P.C., entitling the applicant to bail.

5. Learned Deputy Prosecutor General opposed the bail application and contended that the applicant is nominated in the FIR with specific allegations of committing sodomy and murder of a minor boy, offences punishable with death or imprisonment for life, as such, attracting the prohibitory clause of Section 497 Cr.P.C. She contended that the nature of the accusation is heinous and brutal and that the material collected during investigation *prima facie* connects the applicant with the commission of offence. He contended

that at bail stage only tentative assessment is to be made and deeper appreciation of evidence is not permissible. She further contended that the further statements of the complainant clarify the role of the applicant. She, therefore, prayed for dismissal of the bail application.

6. In addition, learned counsel for the complainant vehemently opposed the grant of bail and adopted the arguments advanced by the learned D.P.G. He contended that the deceased was a minor child and the offence committed is grave and heinous in nature. He contended that the applicant has been specifically nominated and assigned active role in the commission of offence. He contended that mere delay in lodging FIR cannot dominate the gravity of the offence. He further contended that release of the applicant may cause intimidation to the complainant's family. He prayed that the bail application be dismissed.

7. I have heard learned counsel for the parties and have carefully examined the record. It is well settled that at the stage of bail, the Court is required to make only a tentative assessment of the available material to ascertain whether there exist reasonable grounds for believing that the accused has committed the offence or whether the case falls within the ambit of further inquiry as contemplated under Section 497 (2) Cr.P.C.

8. Admittedly, the alleged occurrence took place on 19.06.2024 and the dead body was recovered on 20.06.2024, yet the FIR was lodged on 31.07.2024 after recording final postmortem report. The delay of approximately one month and eleven days remains unexplained from the record. The complainant was aware of the death of his son on 20.06.2024 and the police had also been informed at that time. In absence of any plausible explanation for such inordinate delay, the possibility of due deliberation and consultation cannot be ruled out at this stage. Unexplained delay in lodging FIR, particularly in cases resting upon circumstantial evidence, is a factor which creates doubt and requires cautious examination at trial. The occurrence is admittedly unseen. No eyewitness has been cited who saw the applicant administering intoxicant, committing sodomy or causing death of the deceased.

There is also no last-seen evidence connecting the applicant with the alleged offence. The nomination of the applicant appears to be based upon information allegedly gathered from unspecified persons of the locality. The further statements of the complainant recorded at a belated stage on 14.03.2025 and 18.04.2025 contain improvements and additional details which were not mentioned in the FIR. Such improvements, at least tentatively, affect the credibility of the prosecution case and require deeper appreciation at trial. Another significant aspect is that the applicant was initially released under Section 169 Cr.P.C. by the Investigating Officer, which indicates that at one stage the Investigating Agency did not find sufficient incriminating material against him. His subsequent re-arrest appears to be primarily based upon improved statements of the complainant. This circumstance, without expressing any conclusive opinion, creates reasonable doubt necessitating further inquiry.

9. It is also noteworthy that no recovery of any incriminating article has been effected from the applicant. The medical and forensic evidence, even if taken at its face value, may support the factum of unnatural death or alleged sexual assault, but there is no scientific material presently available, which specifically connects the applicant with the commission of offence. Medical opinion, in absence of independent corroborative evidence linking the accused, does not by itself establish culpability. The applicant has been in custody since 24.09.2024 (more than one year). The record reflects that despite earlier directions for expeditious disposal, the trial has not made meaningful progress and no prosecution witness has been examined. Incarceration of the applicant for an indefinite period without substantial advancement of trial proceedings influences against the settled principle that bail is not to be withheld as a measure of punishment. The presumption of innocence remains attached to the accused until proven guilty after full-fledged trial.

10. The Honourable Supreme Court of Pakistan in case of AKHTAR v. KHWAS KHAN and another (2024 SCMR 476) has held that:

*“6. It is a well settled notion of law that further inquiry is a question which must have some nexus with the result*

*of the case for which a tentative assessment of the material on record is to be considered for reaching a just conclusion. It pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. The law of bails is not a stagnant law but is developing with the exigencies of time. The expression "reasonable grounds" as contained under section 497, Cr.P.C., necessitated the prosecution to show that it is in possession of sufficient material or evidence to demonstrate that accused had committed an offence falling within the prohibitory limb of section 497, Cr.P.C. However for seeking the concession of bail, the accused person has to show that the material or evidence collected during investigation against him creates reasonable doubt or suspicion in the prosecution case. While deciding bail applications, it is the foremost duty of the Courts to apply a judicious mind tentatively for reaching the just and proper conclusion regarding whether reasonable grounds are made out or not to enlarge the accused on bail, and the expression 'reasonable grounds' signifies and corresponds to the grounds which are legally rational, acceptable in evidence and attractive to the judicial mind, as opposed to being imaginative, fallacious and/or presumptuous. Whenever reasonable doubt ascends with regard to the involvement of an accused person in the crime or about the certainty or probability of the prosecution case and the evidence proposed to be produced in support of the charge in Court during trial, the accused should not be deprived of the benefit of bail and it would be better to keep him on bail than in jail. The basic idea is to enable the accused to answer the criminal prosecution against him rather than to make him rot behind bars. The accused is entitled to expeditious access to justice, which includes the right to a fair and expeditious trial without any unreasonable or inordinate delay. Certain basic principles regarding grant or refusal of bail are settled i.e. that bail cannot be withheld as punishment; every person is presumed to be innocent unless found guilty by a competent court; every person is entitled to a fair trial, which includes a trial without inordinate delay; and that the basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including the pre-trial stage, and even at the time of deciding whether the accused is entitled to bail or not."*

11. For what has been discussed above and considering the (i) unexplained delay in lodging FIR, (ii) absence of ocular and (iii) last-seen evidence, (iv) improvements in subsequent statements at belated stage, (v) initial release under Section 169 Cr.P.C., (vi) absence of recovery and (vii) lack of specific scientific linkage connecting the applicant with the alleged offence, I am of the considered view that the case of the applicant falls within the ambit of further inquiry as envisaged under Section 497 (2) Cr.P.C.

Consequently, the instant post-arrest bail application is **allowed**. The applicant/accused Bashir son of Khamiso is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court. These are the reasons for my short order dated 25.02.2026.

**12.** Instant criminal bail application stands **allowed**.

**13.** Let a copy of this order be transmitted to the trial Court for information.

**JUDGE**

\*Abdullah Channa/PS\*