

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail. Application No.S-240 of 2026  
*[Wali Muhammad versus The State]*

Cr. Bail. Application No.S-449 of 2026  
*[Sajad versus The State]*

|                 |                                 |
|-----------------|---------------------------------|
| Applicants by:  | Mr. Noor-uz-Zaman advocate      |
| Complainant by: | Mr. Babar Ali Panhwar advocate  |
| State by:       | Mr. Altaf Hussain Khokhar D.P.G |
| Date of hearing | 15.06.2026                      |
| Date of Order   | 15.06.2026                      |

## **ORDER**

**TASNEEM SULTANA, J:** Through Criminal Bail Application No.S-240 of 2026, applicant Wali Muhammad seeks pre-arrest bail, whereas through Criminal Bail Application No.S-449 of 2026, applicant Sajad seeks post-arrest bail, both emanating from F.I.R. No.16 of 2026, registered at Police Station Matiari, under Sections 496-A, 452, 34, P.P.C. Their earlier bail applications were dismissed by the learned Additional Sessions Judge/Special Judge (Anti-Rape), Matiari, vide orders dated 21.02.2026 and 10.03.2026, respectively. Since both applications arise out of one and the same F.I.R., they are being disposed of through this common order.

2. Brief facts of the prosecution case are that complainant Gulzar Ahmed stated that he was married to Mst. Rozeena about ten years prior to the incident and had three children from such wedlock. On 17.01.2026, at about 10:00 p.m., the complainant and his brother Gul Muhammad were present in the house when accused Wali Muhammad and Sajad, both sons of Jamaluddin, along with two unknown persons, armed with pistols, allegedly entered the house. It is alleged that, on the force of pistols, they forcibly took away Mst. Rozeena, wife of the complainant, who raised cries, but due to fear of weapons, the complainant and his brother did not proceed ahead. The accused allegedly took her away in a Mehran car bearing AFR number, which was standing outside the house. Thereafter, the complainant approached the relatives of accused Wali Muhammad for return of Mst. Rozeena, who kept giving assurances, but subsequently refused to return her; hence, the F.I.R. was lodged.

3. Learned counsel for the applicants contends that the applicants are innocent and have been falsely implicated; that there was delay of about four days in lodging of the F.I.R., for which no plausible explanation has been furnished; that the offence under Section 496-A, P.P.C. does not fall within the prohibitory clause of Section 497, Cr.P.C.; that the complainant has involved the applicants due to previous

dispute/enmity over plot; that the prosecution story is unnatural and no independent person from the locality has been cited as witness; that the medical report does not show any injury or mark of resistance on the person of the victim; that no recovery has been effected from the applicants; that applicant Sajad claims to be juvenile and, being in judicial custody, is no more required for further investigation; learned counsel lastly prayed that interim pre-arrest bail granted to applicant Wali Muhammad may be confirmed and applicant Sajad may be admitted to post-arrest bail.

4. Conversely, learned D.P.G. Sindh, assisted by learned counsel for the complainant, opposes both bail applications and contends that both applicants are nominated in the F.I.R. and have also been implicated by the victim in her statements recorded under Sections 161 and 164, Cr.P.C.; that DNA report connects applicant Wali Muhammad with the alleged offence; that no case for bail is made out; learned D.P.G. lastly prayed for dismissal of both applications.

5. Heard. Record perused.

6. It appears from the record that both applicants are nominated in the F.I.R. with the allegation that they, along with two unknown persons, entered into the house of the complainant while armed with pistols and forcibly took away Mst. Rozeena, wife of the complainant. The victim, in her statements recorded under Sections 161 and 164, Cr.P.C., has also implicated both applicants with allegations of confinement and sexual assault. The record further contains DNA report, which shows that semen/sperm fraction found on the clothes of the victim matched with the blood sample of applicant Wali Muhammad. Thus, at this stage, sufficient prima facie material is available on record connecting the applicants with the alleged offence. The plea that the medical report does not show injury or marks of resistance on the person of the victim is not sufficient, at this stage, to discard the prosecution case, particularly when the victim has supported the prosecution version in her statements recorded under Sections 161 and 164, Cr.P.C.

7. There is no dispute that Section 496-A, P.P.C. carries punishment which may extend to seven years and does not fall within the prohibitory clause of Section 497(1), Cr.P.C. However, grant of bail in non-prohibitory offences is not automatic. The Court is required to consider the nature of accusation, the role attributed to the accused and the material available on record. The legislature has intentionally kept Section 496-A, P.P.C. as non-bailable and it has consistently been held by this Court as well as the Hon'ble Supreme Court of Pakistan that, in non-bailable offences, grant of bail is not the right of an accused, rather it is a concession. Reference may well be made to the case of *Shameel Ahmed vs. The State* (2009 SCMR 174), wherein the Hon'ble Supreme Court of Pakistan has held that:—

*“4... .. With regard to the contention that the bail should always be*

*granted in cases not falling within the domain of prohibition clause of proviso to section 497, Cr.P.C. it is observed that it is not a rule of universal application. Each case has to be seen through its own facts and circumstances. The grant of bail, no doubt, is discretion granted to a Court, yet the exercise of it cannot be arbitrary, fanciful or perverse.”*

8. In another case of Mehmood Siddique vs. Imtiaz Begum and two others (2002 SCMR 442), the Hon’ble Supreme Court of Pakistan held that:—

*“4.....None can claim that bail as of right is non-bailable offences even though the same do not fall under the prohibitory clause of section 497 Cr.P.C.”*

9. In the present case, keeping in view the nature of accusation and material available on record, the applicants cannot claim bail as a matter of right merely on the ground that Section 496-A, P.P.C. does not fall within the prohibitory clause of Section 497, Cr.P.C.

10. So far as delay in lodging of the F.I.R. is concerned, the same has been explained in the F.I.R. itself, wherein the complainant stated that he first approached the relatives of accused Wali Muhammad for return of Mst. Rozeena and, on their refusal, reported the matter to police. In cases of this nature, some effort by the family to recover the woman through relatives or elders before approaching police cannot be treated as unnatural. Thus, the delay, when examined along with other material on record, does not make the case one of further inquiry at this stage.

11. The plea of juvenility raised on behalf of applicant Sajjad also does not improve his case at this stage. The documents relied upon by the defence have not yet been verified, nor has the age of the applicant been determined in accordance with law, whereas the police papers mention his age as 18/19 years. Therefore, no final finding regarding juvenility can be recorded in these bail proceedings. The applicant may raise such plea before the learned trial Court, which shall determine the same in accordance with law, if so moved.

12. Insofar as applicant Wali Muhammad seeks pre-arrest bail, it was also incumbent upon him to show mala fide, ulterior motive or intended humiliation, but no such circumstance is apparent from the record. Mere plea of previous enmity over plot, without supporting material, is not sufficient to extend him the extraordinary concession of pre-arrest bail.

13. In view of the above facts and circumstances, applicant Wali Muhammad has failed to make out a case for confirmation of pre-arrest bail. Consequently, the interim pre-arrest bail granted to him vide Order dated 25.02.2026 is recalled and Criminal Bail Application No.S-240 of 2026 is dismissed. Applicant Sajjad has also failed to make out a case for grant of post-arrest bail. Consequently, Criminal Bail

Application No.S-449 of 2026 is also dismissed.

14. Needless to observe that the observations made hereinabove are tentative in nature and shall not prejudice either party at trial.

JUDGE