

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.S-417 of 2026

Applicant : Mst. Sumaira Kulsoom daughter of
M. Saleem Khan through Mr. M.
Afzal Roshan, Advocate

The State : Through Mr. Sharaf-u-Din Kanhar,
Assistant Prosecutor General, Sindh

Date of hearing : 13.04.2026

Date of decision : 13.04.2026

ORDER

Jan Ali Junejo, J.- This Order shall decide the post-arrest Criminal Bail Application filed by Applicant-Sumaira Kulsoom daughter of M. Saleem Khan under Section 497, Cr.P.C., arising out of FIR No.23 of 2026, registered at Police Station Baloch Colony, District East, Karachi, for offence under Sections 376(ii), 337-J PPC, 3 Prevention of Trafficking In Person Act, 2018. The Applicant seeks bail after arrest, being aggrieved by the Order dated 28.01.2026, passed by learned Additional Sessions Judge-III/ Special Court (ARITA-2021), Karachi South, whereby, his earlier bail plea (Criminal Bail Application No.285 of 2026) was declined.

2. Briefly stated, the prosecution case as set out in FIR No.23 of 2026 is that the Complainant, along with her family, is resident of House No.R-38, Sector 3/34, Korangi No. 3, Karachi, and on 12.01.2026 at about 19:30 hours she went to Irfan Masjid/Madrassa to meet her minor daughter Tayyaba, aged about 12 years, who was studying Quran/Nazra there. Upon meeting, the minor, while weeping, disclosed that on 08.01.2026 at about 22:00 hours, while present at the Madrassa, the applicant Sumaira Kulsoom (Baji of the said Madrassa), with permission of the administration, took her and another student, namely Sadia, in a rickshaw to a house situated about ten minutes away, where two unknown persons were already present. It is alleged that the applicant administered some intoxicant to them, due to which they became semi-conscious; upon regaining consciousness, the victim found herself lying naked on a charpoy with a rope tied over her mouth, feeling pain in her abdomen and noticing her clothes soiled, while the applicant and the two unknown

persons were present there. Upon raising cries, the unknown persons attempted to apprehend her, whereupon she bit one of them on his left hand and he, in turn, bit her on the neck. Thereafter, the applicant brought them back to the Madrassa in the same rickshaw. The victim further disclosed that on 10.01.2026 she narrated the incident to Bajji Zainab of the Madrassa, and subsequently, the complainant, along with the victim, approached the police station seeking legal action against the applicant and two unknown persons for the offences of rape and administration of intoxicants, leading to registration of the instant FIR.

3. Learned Counsel for the Applicant submits that the Applicant has been falsely implicated and is completely innocent of the accusations. He argues that there is an unexplained delay of approximately five days in lodging the FIR, which creates serious doubts regarding the prosecution's version. He further argued that the alleged victims were admittedly sent to "Balghan Madarsa" with permission from the madrasa administration, which contradicts the theory of forcible taking the victims and no detail is given about how, when, or by whom they were transported to any unknown place and no place of alleged confinement is identified. He further argued that the medical examination report available with the prosecution does not suggest sexual assault or attempt with the victims and absence of medical support weakens the prosecution version at this stage. He further argued that the role attributed to the applicant/accused is limited to being present and allegedly giving water and even if accepted for the sake of argument, this does not constitute kidnapping or attempted rape. He further argued that the applicant/accused is a woman and provisions of Section 497 Cr.P.C.. extends concession of bail to a female accused unless exceptional circumstances exist and no such circumstance is shown. He further argued that there are material contradictions in version of the FIR, 161 and 164 Cr.P.C statements of both victims and Complainant. Lastly, he prayed for grant of bail to the applicant/accused.

4. Conversely, the learned Assistant Prosecutor General, Sindh opposes the bail application. He submits that the Applicant has been specifically named with a clear and detailed role in the victim's statement recorded under Section 164, Cr.P.C., before the Judicial Magistrate. He argued that the specific role of the present applicant/accused is that she took the minor victims from the madrasa to another place where the principal offence was committed and such act constitutes active facilitation and falls within the concept of common intention and abetment. He further argues that the offences of rape and kidnapping for zina fall squarely

within the prohibitory clause of Section 497, Cr.P.C., thereby limiting the Court's discretion to grant bail. He argues that although the victim is an minor, the manner in which she was enticed, deceived, transported, and sexually exploited squarely constitutes trafficking in persons under the 2018 Act. He submits that the medical report supports the allegation of violence and is consistent with the victim's account. He argues that the delay in lodging the FIR is natural and justified in cases involving abduction and sexual assault, particularly due to social stigma and trauma. He further submits that the proviso to Section 497 Cr.P.C., regarding a female accused is not absolute and does not apply where the offence is heinous, involving minors and where the accused has played an active role. He submits further that strong prima facie evidence exists against the Applicant. Accordingly, she prays that the bail application be dismissed.

5. I have heard learned Counsel for the Applicant as well as Assistant Prosecutor General, Sindh and have perused the record with their able assistance. Though the Applicant, is nominated in the FIR with a specific and active role in the commission of the alleged offence.

6. Record reflects that the applicant is specifically assigned the role of taking away the victim girls from the madrasa to another private place where the offence of rape was allegedly committed. Such conduct prima facie establishes her participation with common intention to facilitate the principal accused persons.

7. It is further alleged that the Applicant administered some intoxicating substance to the victims, as a result whereof they became unconscious. Due to this act, the co-accused persons allegedly succeeded in committing the offence of rape. The victims, after regaining consciousness, found themselves naked, while two male persons were present there, who allegedly committed the offence.

8. The statements of the victims recorded under Section 164 Cr.P.C. fully support the prosecution case. The medical evidence also lends corroboration to the version of the prosecution. Furthermore, statements of independent witnesses, namely Mst. Zainab and Mr. Naeem Ullah, have been recorded, who have also supported the prosecution story.

9. At the bail stage, deeper appreciation of evidence is not required. The material available on record prima facie connects the applicant with the commission of the alleged offence. The case does not fall within the ambit of "further inquiry" as contemplated under Section 497(2) Cr.P.C.

Rather, there appears to be sufficient incriminating material indicating active involvement of the applicant. In view of the above, no case for grant of bail is made out. Consequently, the bail application is hereby dismissed. The observations herein are tentative and confined to the decision of bail. The trial Court shall not be influenced thereby and shall adjudicate strictly on the evidence led before it.

JUDGE

Qurban

After hearing the learned counsel for the parties and perusing the available record, it appears that the present case involves grave and heinous allegations attracting the prohibitory clause of Section 497, Cr.P.C., as the offences alleged include Section 376(ii), PPC and Section 3 of the Prevention of Trafficking in Persons Act, 2018, which carry severe punishments. At the bail stage, the Court is only required to tentatively assess the material to determine whether reasonable grounds exist to believe that the accused is connected with the commission of the offence.

In the instant case, the applicant has been specifically nominated in the FIR with a distinct and active role, which finds further corroboration from the statement of the victim recorded under Section 164, Cr.P.C., wherein she has categorically stated that the applicant, being in a position of trust as a "Baji" of the Madrassa, took the minor victims from the Madrassa to another مکان where the principal offence was allegedly committed. The act of taking the minor victims to an unknown place and administering intoxicant prima facie constitutes facilitation and active participation, thereby attracting the principle of common intention as well as abetment. At this stage, such role cannot be termed as merely ancillary or passive.

It is a settled principle of law, as laid down by the Honourable Supreme Court of Pakistan in Tariq Bashir v. The State (PLD 1995 SC 34), that where reasonable grounds exist connecting the accused with the commission of a non-bailable offence falling within the prohibitory clause, bail is not to be granted as a matter of course. Similarly, in Imtiaz Ahmad v. The State (2018 SCMR 344), it has been held that statements recorded under Section 164, Cr.P.C. carry strong evidentiary value at the bail stage and can be safely relied upon for forming a tentative opinion.

Moreover, in cases involving sexual offences, particularly against minors, the Courts have consistently held that delay in lodging the FIR is not necessarily fatal to the prosecution case, as observed in State v. Abdul Khaliq (PLD 2011 SC 554), wherein it was recognized that social stigma, fear, and trauma often prevent prompt reporting. Thus, the delay of a few days in the present matter stands plausibly explained and does not create any dent in the prosecution case at this stage.

As regards the contention of absence of medical corroboration, it is by now well-settled that conviction in rape cases can be based upon the sole testimony of the victim if it inspires confidence, as held in Muhammad Akram v. The State (2009 SCMR 230); therefore, at bail stage, absence or otherwise of medical evidence is not decisive when ocular account is available and consistent. In the present case, the victim's account, supported by her statement under Section 164, Cr.P.C., provides sufficient tentative material against the applicant.

The plea of the applicant being a female and thus entitled to concession under the proviso to Section 497, Cr.P.C. also does not advance her case. The said concession is not absolute and is subject to the nature and gravity of the offence and the role attributed. In Shabana Bibi v. The State (2016 SCMR 1458), it has been held that such concession may be declined where the accused is involved in a heinous offence or has played an active role. In the present case, the allegations reveal that the applicant exploited her position of trust and facilitated the commission of a serious offence against a minor, which constitutes an exceptional circumstance disentitling her from the benefit of such concession.

Furthermore, the argument regarding contradictions in statements under Sections 161 and 164, Cr.P.C. pertains to deeper appreciation of evidence, which falls within the domain of trial and cannot be conclusively adjudicated upon at bail stage, as held in Khalid Javed v. The State (2003 SCMR 1419).

In view of the above discussion, there exist reasonable grounds to believe that the applicant is connected with the commission of the alleged offences, and the case does not fall within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C. Consequently, the applicant has failed to make out a case for grant of post-arrest bail.