

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-310 of 2026

Applicant: Mashooque Ali through Mr. Naseer Ahmed Samoo, Advocate.

Respondent: The State through Mr. Shawak Rathore, Deputy Prosecutor General, Sindh along with Inspector Ghulam Qadir Massan, PS Gulab Laghari, District Badin.

Complainant: Mst. Zahidan through Mr. Saeed Shams Memon, Advocate.

Date of hearing: 12.10.2026.

Date of order: 12.10.2026.

ORDER

MUHAMMAD HUMAYON KHAN, J. - Through this Criminal Bail Application, the applicant seeks pre-arrest bail in Crime No.15/2025, registered at Police Station Gulab Leghari, District Badin, for offences punishable under Sections 377 and 337-J, P.P.C. The applicant has approached this Court after dismissal of his earlier pre-arrest bail application vide order dated 23.04.2025 by the learned 2nd Additional Sessions Judge, Badin, including the application dismissed by the learned 2nd Additional Sessions Judge, Badin, vide order dated 24.12.2025 and dismissal of his subsequent application by this Court in non-prosecution on 20.03.2026.

2. The prosecution alleges that the applicant committed sodomy with the complainant's minor son after administering an intoxicating substance to him. The applicant asserts false implication and relies principally upon a negative DNA report and the absence of documentary proof of intoxication. The prosecution opposes the application on the basis of the victim's account, the circumstances reflected in the record and the applicant's conduct after refusal of bail.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated owing to *mala fide* on the part of the complainant, allegedly arising from a dispute over payment for goods purchased on credit from the applicant's grocery shop. He contends that the DNA report does not establish a match between the applicant and the samples collected from the victim, while no conclusive material

establishes administration of an intoxicating substance. He further contends that the allegations require further inquiry under Section 497 (2), Cr.P.C., and that the applicant has no previous criminal record. According to counsel, the prosecution witnesses are related to the complainant and prayed for the extraordinary concession of pre-arrest bail.

4. Learned Deputy Prosecutor General, Sindh, opposes the application and supports the prosecution case. He contends that the applicant has been specifically nominated in the FIR and attributed a direct role in the alleged offence against the victim. He further maintains that the negative DNA report, by itself, does not conclusively disprove the accusation or override the victim's account. He prays for dismissal of the application in view of the nature of the allegation and the material available on record.

5. Learned counsel for the complainant vehemently opposes the application, contending that the victim has consistently implicated the applicant in the commission of the alleged offence. He contends that the accusation concerns a serious offence against a minor and cannot be discarded merely because the DNA report is negative. He further contends that the applicant has failed to substantiate the alleged monetary dispute or demonstrate *mala fide* sufficient to justify the extraordinary relief of pre-arrest bail. He, therefore, prays for dismissal of the application.

6. I have heard learned counsel for the applicant, learned D.P.G., Sindh and learned counsel for the complainant and have examined the material available on record.

7. At the outset, it is settled that pre-arrest bail under Section 498, Cr.P.C. is an extraordinary discretionary relief and is not to be granted as a matter of routine. The applicant must demonstrate circumstances justifying the Court's intervention against an apprehended arrest, particularly by showing that the process of law is being invoked *mala fide* or for an ulterior purpose. Although personal liberty is a fundamental guarantee, its protection must be balanced against the nature of the accusation, the material collected during investigation, the conduct of the applicant and the interests of the victim and the administration of justice. The Court is required to make a tentative assessment only; a final determination of guilt or innocence remains within the exclusive domain of the trial court. In the present case, the FIR

specifically attributes the alleged offence to the applicant. According to the complainant, her son, Hubdar Ali, aged about seventeen years, disclosed that on the night between 5th and 6th April 2025, after accompanying the applicant and others to a village, he was given a Mirinda bottle allegedly containing an intoxicating substance and was thereafter subjected to sodomy while in a semi-conscious condition. The FIR was registered on 12.04.2025. The victim's account, as discussed in the impugned order, directly implicates the applicant. The provisional medical certificate is also stated to record abrasions on the victim's neck. These circumstances require consideration collectively and cannot be disregarded merely on the basis of a single forensic result.

8. The principal ground pressed by learned counsel for the applicant is the negative DNA report. However, a negative DNA result does not, in every case, conclusively establish that the alleged offence did not occur. Its evidentiary significance depends upon the nature of the samples, the time and manner of their collection, the medical findings, and the other material available on record. In the case of Aziz-ur-Rehman alias Babul v. The State (2022 P.Cr.L.J. 828), this Court declined pre-arrest bail notwithstanding a negative DNA report, observing that the victim's specific and confidence-inspiring account could *prima facie* connect the accused with the offence and that the effect of the forensic result was a matter for assessment in light of the circumstances of the case. It further recognizes that the absence of corroborative medical or forensic evidence does not automatically render a direct accusation insufficient for purposes of bail. The principle stated in the case of Aziz-ur-Rehman [supra] must, of course, be applied with due regard to the particular facts of the present case. Here, the applicant relies upon the negative DNA report and the alleged absence of documentary proof of intoxication. Those circumstances may be relevant at trial; however, on the material presently described, they do not independently eliminate the direct accusation attributed to the victim or conclusively establish that the applicant has been implicated for an ulterior purpose. The absence of documentary proof of administration of an intoxicant must likewise be considered alongside the victim's account and the remaining evidence, rather than treated as determinative at the bail stage. This approach also finds support in P L D 2012 Sindh 174, Shoukat alias Shafqatullah v. The State, wherein this Court declined pre-arrest bail after considering the specific role attributed to the applicant and the principle that liability in offences of a sexual nature must be assessed in the light of the allegations

and the available material. The case underscores that the Court must undertake a tentative assessment of the accusation and the role attributed to the accused, rather than determine the matter solely on the basis of an isolated contention advanced in defence. In the present matter, the prosecution attributes a direct role to the applicant, as distinguished from a case involving mere presence at the scene.

9. Further guidance is available from 2026 P.Cr.L.J. 282, Abdul Ghaffar v. State through Advocate General, Azad Jammu and Kashmir, Muzaffarabad and another, wherein the Court reiterated that pre-arrest bail is an exceptional remedy and that the nature of the offence, the tentative assessment of *mala fide*, the applicant's conduct and the material available on the initial record are relevant considerations. The judgment emphasizes heightened judicial scrutiny where the allegations concern grave offences and the record discloses reasonable grounds connecting the accused with the alleged crime. These principles are relevant to the present application, without overlooking that the cited judgment arose under a different statutory framework and on its own facts.

10. The applicant's allegation that the complainant implicated him because of a dispute over credit purchases has also been considered. At this stage, the alleged dispute remains a defence assertion and no specific supporting material has been identified in the application that sufficiently demonstrates an ulterior motive of the kind required to justify pre-arrest protection. Mere assertion of *mala fide*, without persuasive material supporting it, is not by itself sufficient to displace the *prima facie* effect of the specific accusation. The contention that the witnesses are related to the complainant does not, without more, render their evidence inherently unreliable at this preliminary stage.

11. Furthermore, the applicant's conduct after the earlier bail proceedings is another relevant circumstance. The impugned order records that after refusal of his earlier application, the applicant remained away from the process of law for approximately eight months. Such conduct, if borne out by the record, is relevant when assessing whether the applicant seeks protection against a *mala fide* arrest or is attempting to obtain the extraordinary concession of pre-arrest bail without submitting to the ordinary process of law. The subsequent dismissal of his application by this Court in non-prosecution on 20.03.2026 does not, by itself, determine the merits of the present application; nevertheless, it

provides no substantive basis for granting relief. The Court is mindful that the allegations are serious and that the applicant remains entitled to the presumption of innocence and a fair trial. However, at this stage, the specific accusation attributed to the victim, the medical circumstance, the absence of persuasive material establishing *mala fide* and the applicant's recorded conduct collectively do not persuade that the case warrants the extraordinary relief contemplated by Section 498, Cr.P.C. The material relied upon by the applicant, including the negative DNA report, does not, on the present tentative assessment, sufficiently displace the grounds connecting him with the alleged offence so as to justify pre-arrest bail. The case is therefore not made out for grant of the extraordinary concession.

12. For the foregoing reasons and in view of the principles enunciated in the cases of Aziz-ur-Rehman alias Babul v. The State (2022 P.Cr.L.J. 828), Shoukat alias Shafqatullah v. The State (P L D 2012 Sindh 174), and Abdul Ghaffar v. State (2026 P.Cr.L.J. 282), the instant application for pre-arrest bail is **dismissed** and the interim pre-arrest bail granted to the applicant by this Court vide order dated 10.03.2026 is hereby recalled.

13. It is clarified that the observations made herein are tentative and confined exclusively to the disposal of this bail application. Nothing stated in this order shall prejudice either party at trial and the learned trial court shall independently assess the evidence and decide the case strictly in accordance with law preferably within a period of three months after receipt of this Court.

JUDGE