

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Bail Application No.S-344 of 2026

(Abdul Qayoom @ Ali vs. The State)

Applicant : Abdul Qayoom alias Ali s/o Abdul Samad
Through Mr. Afzal Karim Virk, Advocate.

Respondent : The State
Through Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing : 27.10.2026

Date of Order : 27.10.2026

ORDER

NISAR AHMED BHANBHRO, J: Through the instant bail application, applicant Abdul Qayoom alias Ali s/o Abdul Samad, seeks post arrest bail under Section 497 Cr.P.C in F.I.R bearing Crime No.23 of 2020, registered at Police Station Mehmoodabad for offences punishable under Sections 363,364-A,371-B,372, 376(i) P.P.C r/w section 3-4 Sindh Child Marriage Restraint Act, 2013. His earlier application for post arrest bail was dismissed by the learned Additional Sessions Judge-II/GBV/Anti Rape, Mirpurkhas, vide order dated 15-05-2026 passed in Criminal Bail Application No. 33 of 2026 (in Sessions Case No.414/2020), whereafter he invoked the jurisdiction of this Court.

2. The facts necessary for deciding instant bail application are that complainant S.I.P Iftikhar Bajwa, S.H.O P.S Mehmoodabad, lodged F.I.R on 15-04-2020 at the same police station alleging therein that on 14.04.2020 while he was present at the police station, one Fatima daughter of Muhammad Aslam Pathan, aged about 12 years, appeared and sought protection, therefore, she was taken into protective custody and kept at the Women Police Station. On 15-04-2020 she was produced before the concerned Court, where her statement under section 164 Cr.P.C was recorded. They (police) also recorded her statement under section 161 Cr.P.C. In both such statements, the said girl disclosed the commission of cognizable offence. The facts, as narrated by her, are that she resides in Mohallah Nayaabad Baghdadi, Liyari Town, Karachi. one Abdul Samad alias Ali Khaskheli resides in her neighborhood. On 29.02.2020, in the evening, her mother gave her Rs.300/- and asked her to purchase some household items from a nearby shop. As she (Fatima) left her house, she met Ali, who told her that

he would take her out for a visit. He thereby enticed her and took her to Mirpurkhas and kept her at his sister's house for one night and subsequently handed her over to Mst. Maqboola Gujjar and her daughter namely Billo Gujjar, after which he absconded. A few days later, Waqar Bibi alias Billo Gujjar enticed her (Fatima) and sent her on a motorcycle with her husband Khair Muhammad, who handed over her to one Awais, the brother of Akram Khaskheli, at Chandni Chowk. Awais took her to his house. Then after five/six days, Akram Khaskheli, along with his daughter-in-law Nadia, and one Javed Khaskheli, took her to Hyderabad in a car, where they forcibly arranged her *Nikah* with Akram. Subsequently, they brought her back to Mirpurkhas and took her to Awais's house. Akram also established sexual relations with Fatima. Furthermore, he called another person and after receiving Rs.5,000/= offered her to that person for sexual intercourse. During this period, a video of the girl went viral. Akram Khaskheli and Maqboolan Gujjar became frightened and consequently concealed her (Fatima) at the house of Nasreen, a relative of Maqboola. However, after the police informers became active, they abandoned Fatima near Police Station Mahmoodabad yesterday, on 14.04.2020, at about 1300 hours, and fled away. The police informers provided secret information that Ali Khaskheli had sold Fatima to Maqboola Gujjar and her daughter Waqar Bibi alias Billo Gujjar, in exchange for money. The character and conduct of Maqboola Gujjar and her daughter is reported to be questionable and a case had previously been registered against them for trafficking women. They allegedly sold Fatima to Akram Khaskheli for Rs.100,000/=. Akram is also stated to be a person of questionable character. They (police) also contacted Fatima's parents, who also confirmed over the telephone that their daughter Fatima had been missing since she left home in the evening on 29.02.2020. Due to the lockdown and the unavailability of transport, her parents have been unable to travel from Karachi to reach here. Therefore, on behalf of the State, complainant lodged instant F.I.R.

3. It transpires from the record that after conclusion of trial, applicant and co-accused were convicted for offence under Section 366-A P.P.C and sentenced to suffer R.I for 10 years with fine of Rs.50,000/- each and in case of default to suffer S.I for 03 months more and further convicted them for offence under sections 371-A and 371-B P.P.C and sentenced to suffer R.I for 25 years with fine of Rs.1,00,000/- each and in case of default in payment of fine to suffer S.I for three months more. The applicant and co-accused preferred Criminal Jail Appeals, against the said judgment, before this Court. In

the said appeals the impugned judgment was set aside and matter was remanded back to the trial court for *de novo* trial, vide judgment dated 03-09-2025.

4. Learned counsel for the applicant contended that applicant is in jail since year 2020 though he was convicted by learned trial court for 25 years imprisonment, but same stands set aside by this court and now the trial court is seized with the matter for its decision afresh after recording evidence. He further contended that F.I.R was delayed by 45 days and in the instant crime co-accused namely Waqar Bibi, Akram Khaskheli and Maqboolan Gujjar have already been granted bail and case of present applicant cannot be differentiated as the applicant was assigned the role to bring the alleged victim Fatima in the house of co-accused Maqboolan Gujjar, wherefrom Maqboolan Gujjar got victim married with co-accused Akram Khaskheli. He contended that role assigned to the present applicant is same in nature and in the statement of victim under section 164 Cr.P.C, it has not been alleged that she was brought for prostitution purposes and it is own admission of the victim that she was got married to Akram Khaskheli, therefore offence under sections 371-A, 371-B P.P.C were not made out and per opinion of I.O it was case under section 3-4 of Sindh Child Marriage Restraint Act, 2013, which is punishable upto five years and does not come within the ambit of prohibitory clause of section 497(1) Cr.P.C. He further contended that since April, 2020 applicant is behind the bars without trial and again hardship is also made out. He contended that there is no C.R.O of the applicant, therefore, it is a fit case for grant of bail to the applicant under 4th proviso of section 497 Cr.P.C.

5. Learned Deputy P.G controverted submissions and submitted that the offence alleged is serious in nature; the applicant is alleged to bring victim to Mirpurkhas from Karachi and got solemnized her marriage with co-accused Akram Khaskheli. He further submitted that victim Fatima in her 164 Cr.P.C statement has specifically named present applicant. He, therefore prayed for dismissal of instant bail application. However, he fails to controvert that applicant is in jail since last about 06 years and trial is yet to complete

6. Heard arguments and perused the material available on record. Perusal of record reveals that applicant is allegedly involved in an offence punishable under section 371-B P.P.C. For ease of reference, section 371-B P.P.C is re-produced as under:

371B. Buying person for purposes of prostitution, etc.____ Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation.____ Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.]

7. From perusal of above provision, it transpires that any person, who is involved in selling, buying, hiring or disposing of any person for the purpose of prostitution will fall within the ambit of definition of offence punishable under section 371-B P.P.C. Victim Fatima in her statement under section 164 Cr.P.C has stated that about 01 or 02 months back, Ali Khaskheli (present applicant) brought her at Mirpurkhas for visiting purpose from Karachi, he kept her in the house of his sister; thereafter, she was left in the house of Maqboolan Gujjar and Maqboolan Gujjar got her marriage with Akram Khaskheli. She has not alleged that she at any point of time used for prostitution purposes. Moreover, co-accused Akram Khaskheli, against whom there is allegation of solemnizing marriage with victim Fatima, and Maqboolan Gujjar, who has alleged to have solemnized such marriage, have already been granted bail. The role of the present applicant cannot be distinguished from the role of co-accused, who have already been granted bail by the learned trial court.

8. The earlier verdict of the conviction for the purpose of deciding bail shall not come in the way of applicant as said judgment stands set aside by this court as the trial was conducted in violation of procedure laid down under Cr.P.C. Moreover, the applicant is in incarceration for last more than 06 years, which tantamount to punishment without a verdict, which cannot be sustained under law.

9. For the foregoing reasons, the applicant has made out a case under the principle of rule of consistency, which provides equal treatment to the accused facing same trial and so also under 4th proviso of section 497 Cr.P.C, which provides right of bail when the trial has not been concluded within a period of two years, if the delay was not on the part of the accused. The 4th proviso of section 497 Cr.P.C binds the court to grant bail if the trial within the stipulated

time is not completed and such delay was not on the part of the accused. The learned Prosecutor has failed to establish that the trial is not completed within the stipulated time due to fault of the applicant. Consequently, the applicant namely Abdul Qayoom @ Ali s/o Abdul Samad is admitted on bail subject to furnishing a solvent surety in the sum of Rs.500,000/= (Rupees Five Hundred Thousands only) and P.R. Bond in the like amount to the satisfaction of learned trial court.

10. Needless to observe that the findings and observations recorded herein are purely tentative in nature and confined to the disposal of the instant bail application. The learned trial Court shall decide the case strictly on the basis of the evidence brought before it, independently and without being influenced by any observation contained in this order.

The instant bail application stands **allowed** accordingly.

JUDGE

Approved for reporting.

Saleem

