

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Criminal Bail Application No.S-968 of 2022

---

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE</u>
-------------	--------------------------------------

---

03.10.2022

Syed Tariq Ahmed Shah advocate for applicant along with applicant on ad-interim pre-arrest bail.

Ms. Sana Memon, Assistant Prosecutor General along with IO/ASI Muhammad Ali PS Matli.

-.-.-

**MUHAMMAD IQBAL KALHORO, J.-** On 30.04.2022 applicant and co-accused Aijaz allegedly after a Cricket Match brought in a car nephew of complainant, Mehboob Ali, aged about 13/14 years within the jurisdiction of PS Badin near a Sim Nala in Deh Ghaghro and committed sodomy with him turn-by-turn. The boy initially out of shame and fear did not disclose the matter but ultimately he narrated the story to his elders. The matter was finally reported to police on 18.05.2022. And after due investigation interim challan has been submitted in the court which shows that till filing of said report applicant did not join investigation although he was on interim pre-arrest bail extended by the relevant Sessions Court.

2. Learned counsel for the applicant citing the delay in registration of FIR and negative medical report of the victim conducted on 19.06.2022 has pleaded for confirmation of bail and has relied upon in this regard a case reported as 2021 YLR 1736.

3. Learned Assistant PG has opposed bail and IO present has confirmed that applicant did not appear before him in investigation but before one DSP who is supervising the investigation after submission of interim challan. Learned APG has further referred to availability of a USB, recording conversation between complainant/victim and accused in which the latter sounds giving threats to the victim boy.

4. I have considered submissions of the parties and perused material available on record. As per allegations, applicant and co-accused took a boy of 13/14 years of age to a deserted place

and committed sodomy with him turn by turn. There appears no enmity between the parties prompting the complainant to level serious allegations of such nature against applicant. The victim boy is only 13/14 years of age and his being scared and feeling ashamed and therefore maintaining silence after the episode was not but natural. The delay therefore is immaterial. Lack of findings of sodomy in the medical certificate in examination of victim held after 19 days of the incident was also but anticipated and cannot be cited as a ground in favour of granting relief of pre-arrest bail to the applicant. Moreso, such questions, raised in defence, require an inquiry, necessitating a detailed analysis of the facts and cannot be undertaken for deciding the case of pre-arrest bail in which, more than merits, element of malafide on the part of complainant is to be weighed.

5. Learned defense counsel during arguments has also filed a copy of an affidavit executed purportedly by the victim before Sessions Judge exonerating the applicant. Filing of an affidavit at the stage of bail has been deprecated by the Honourable Supreme Court in a number of cases, and it is considered to be an attempt amounting to tampering the evidence. No case of extending extraordinary relief of pre-arrest bail is made out in such circumstances.

6. Accordingly, this application is dismissed and applicant's ad-interim pre-arrest bail granted to him vide order dated 14.09.2022 is hereby recalled.

7. The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE