

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT**  
**MIRPURKHAS**

B.A No.S-183 of 2024  
(Mst. Kalsoom & another Vs. The State)

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**DATE**                      **ORDER WITH SIGNATURE OF JUDGE**

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Date of hearing & Order 15.08.2024

Mr. Francis Lucas Khokhar, Advocate for the applicants  
Mr. Dhani Bux Mari, Assistant P.G Sindh a/w I.O/SIP Mehnaz Awan of  
P.S Women Umerkot  
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**ORDER**

**Adnan-ul-Karim Memon, J.** The applicant Mst. Kalsoom and Mst. Hanifan through the instant application, seeks their release on post-arrest bail in F.I.R No.08 of 2024 for the offense under section 371-A, 371-B PPC r/w section 3(ii) of Prevention of Human Trafficking Act, 2018 at Police Station Women Umerkot.

2. Their earlier bail plea was declined by the trial court vide order dated 01.06.2024 on the premise that the applicants/accused were caught red-handedly while selling the victim Mst. Naseem alias Seema along with her two minor kids, and the victims in their statements under section 161 Cr. P.C., have fully implicated the applicants/accused with the alleged offense.

3. Learned counsel for the applicants argued that the applicants/accused have been falsely implicated due to enmity of CIA I/C with the son-in-law of applicant Mst. Kalsoom and they are not involved in human trafficking. The allegedly recovered woman Mst. Naseem alias Seema did not make a statement under section 164 Cr. P.C and that the applicants were arrested from Kunri town when the applicants were visiting Dargah Syed Khair Muhammad Shah. And that one of the accused is 55 years old whereas the other is 65 years old; that the applicants being the lady accused are also entitled to the relief of bail.

4. On the other hand, the learned Assistant Prosector assisted by the Investigation Officer argued that two women, one Mst. Naseem with two children and another woman Komal alias Kanwal were recovered from the possession of the accused when they were being trafficked, fully supporting the accusations against the applicants/accused. He further contended that no mala fide of the victim existed against the applicants/accused. He prayed for the dismissal of bail.

5. I have heard the learned counsel for the parties and perused the record with their assistance.

6. The accusation against the applicants is that they in connivance with their accomplices attempted to shift the victim Mst. Naseem alias Seema daughter of Allah Ditta with her two children namely Muhammad Ahmed (04 years old) and Khadija (one-year-old) for selling them to someone else, however on their way, they were confronted by the Police team headed by complainant SIP Allah Dino Khaskheli, who caught hold of them red-handed along with the victim. The victim Naseem alias Seema and another subsequently recovered victim namely Mst. Komal alias Kanwal daughter of Jaleel in their statements made under section 161 Cr. P.C have fully implicated the applicants/accused for the alleged offences.

7. It appears that spy information was received by the Police and such a raid was conducted; however, there was sufficient time available with the police to arrange private mashirs as the area was/is a thickly populated area. The very ingredients of sections 371-A & 371-B PPC explicitly provide that there has to be an intention that a person would be used for prostitution or illicit intercourse, but in the present case it is yet to be determined whether the intention of the applicants was to use the ladies/victims for the purpose of prostitution, as the police has failed to locate the purported purchaser for the aforesaid purpose; therefore, in the circumstances, application of aforesaid section is a matter of further probe. Additionally, the point that has attracted the attention of this Court is that the applicants being ladies accused have sought their release on post-arrest bail in terms of the first proviso to Section 497(1) CrPC. The first proviso of section 497(1) Cr. P.C is reproduced hereunder for the convenience of reference:

497. When bail may be taken in cases of non-bailable offence. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years:

Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

8. The Supreme Court in the recent Judgement has held that the first part of Section 497(1) CrPC provides that if a person accused of a non-bailable offence is arrested, he/she may be released on bail. Because of the enabling expression, “may be released on bail”, used in this part, read with the basic principles of criminal justice, the grant of bail in a non-bailable offence that does not fall within the second part of Section 497(1) CrPC is said to be a rule and refusal, an exception, as held.

9. It is further held that the second part of Section 497(1) CrPC provides that an accused shall not be released on bail if there appear reasonable grounds for believing that he/she has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. This part of Section 497(1)

CrPC which prohibits the grant of bail in certain offences is popularly known as the prohibitory clause of Section 497(1) CrPC. It is further held that the first proviso to Section 497(1) CrPC provides that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offense be released on bail. The Supreme Court further dilated upon the subject issue with the observation that the expression “such an offense” used in this proviso refers to the offense mentioned in the second part (prohibitory clause) of Section 497(1) CrPC, as for all other non-bailable offenses the Court is already empowered to release the accused on bail under the first part of Section 497(1) CrPC. The first proviso has thus made equal the power of the Court to grant bail in the offenses of prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused, to its power under the first part of Section 497(1) CrPC. This means that in cases of women, etc., as mentioned in the first proviso to Section 497(1), irrespective of the category of the offense, bail is to be granted as a rule and refusal as an exception in the same manner as it is granted or refused in offenses that do not fall within the prohibitory clause of Section 497(1) CrPC. These exceptions are well settled by several judgments of the Supreme Court. They are the likelihood that the accused: (a) abscond to escape trial; (b) tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; or (c) repeat the offense keeping in view his previous criminal record, nature of the offense or the desperate manner in which he has prima facie acted in the commission of the offense.

10. I have examined the record of the case and do not find any material that would attract any of the above exceptions to refuse bail to the present applicants being lady accused of the offence of alleged human trafficking. I am also cognizant of the fact that the persons involved in the commission of offenses of human trafficking are usually professional criminals and there is a likelihood that they would repeat the offense if enlarged on bail. But the case of the present applicants is distinguishable as they were just arrested with the attempt to sell the victims, without location of the purported purchaser of the victims; therefore, it is yet to be determined whether there was/is sufficient material to connect the applicants with the crime of human trafficking or otherwise, which is only possible if the complainant is examined by the trial Court within one month positively.

11. The order passed by the learned trial Court is, thus, not sustainable under the law and against the dicta laid down by Supreme Court, which needs to be set at naught and this is the reason, this bail application is accepted. Consequently, the applicants Mst. Kalsoom and Mst. Hanifan are admitted to post-arrest bail in the

aforesaid crime, subject to their furnishing solvent surety in the sum of Rs.250,000/- (Two Hundred & Fifty Thousands only) each with one more surety of like amount and P.R Bond in the like amount to the satisfaction of the trial court.

12. Needless to mention that this concession of bail may be canceled by the competent court under Section 497(5) CrPC, if the applicants misuse it in any manner, including causing a delay in the expeditious conclusion of the trial.

**JUDGE**

*"Ali Sher"*