

Order Sheet

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Bail Appl. No. S- 138 of 2025
[Syed Muhammad Zeeshan v. The State]

Applicant : Syed Muhammad Zeeshan through Mr. Nadir Ali,
Advocate

Respondent : The State through Ms. Sana Memon, APG

Date of Hearing : 10.03.2025

Date of Decision : 17.03.2025

ORDER

MIRAN MUHAMMAD SHAH, J :-Through this Criminal Bail Application, Applicant Syed Muhammad Zeeshan seeks post arrest in Crime No. 157 of 2022 registered at Police Station Badin under Sections 377 & 34 PPC. Earlier the Applicant moved bail application before learned IInd Additional Sessions Judge, Badin which was declined vide order dated 30.01.2025, with following observations:

“From the perusal of record, it appears that applicant/accused is nominated in FIR with specific role of committing sodomy with minor victim Mehboob Ali. Victim has also nominated applicant/accused in his 161 Cr.P.C statement so also his evidence recorded in court. It further appears that applicant/accused has remained absconder after rejection of his bail by Hon’ble High Court vide order dated: 03.10.2022 for more than two years and now have been arrested by police after long time. applicant/accused has no justification for such a long abscondence, as it was deliberate and willful and applicant/accused has knowingly defeated the process of law instead of surrendering himself. If he was so innocent, then why he avoided to surrender to process of law after rejection of his bail by Hon’ble High Court. Admittedly, medical evidence is silent with regard to sodomy, but it is a settled law by now that medical evidence is only to corroborate the ocular evidence, otherwise a voluntary and fair statement of victim is sufficient to connect the accused with crime. applicant/accused has failed to point out any enmity or motive of his false implication on part of complainant or victim. Mere raising ground of political rivalry is of no help to applicant/accused without any sufficient proof, further it requires deeper appreciation at trial. Victim has straight away implicated accused of committing act of sodomy with him. The act with which accused is charged is heinous offence and punishment provided for the same falls under the prohibitory clause of section 497 Cr.P.C. accused at this stage, prima facie appears to be connected with the crime. I have great respect for the case laws cited by

learned counsel, but with due respect those are not helpful to the applicant/accused in present circumstances, as facts of this case are different. In view of above discussion, I am of the considered opinion that applicant/accused has failed to make out case for grant of bail. Resultantly, instant bail application is dismissed.”

2. Brief facts of the case are that complainant Jameel Ahmed registered the above FIR on 18.5.2022 for the offence allegedly taken place on 30.04.2022 at 0130 hours alleging therein that Mehboob Ali son of late Javed Memon aged about 13/14 years is the son of his brother-in-law, who told him that on 30.4.2022 he was standing at Shahbaz road after seeing night tournament, meanwhile Zeeshan son of Shahbaz Shah came in a car and said him to sit in the car to visit stadium, thereafter, he taken him to the village of Aijaz Chandio where Aijaz Chandio also sat with them in car, they taken him to Three Mile SimNala, where both committed sodomy with him and left him at Shahbaz Road. He remained silent due to fear and honour but subsequently on such disclosure of Mehboob Ali, complainant arrived at police station and registered present FIR.

3. Learned Counsel submits that the applicant/accused is innocent and he has falsely been involved by the complainant with *mala fide* intentions and ulterior motives, malafide Intention and due to political enmity; that, no any incident as alleged has been made out but the police in collusion with complainant party and involved the present applicant in this heinous crime due political pressure; that the victim has stated that he returned back from tournament and was standing at Shahbaz road than how he once again was ready to go with applicant / accused for seeing the tournament, this aspect of the case requires further inquiry; that there is about 18 days delay in registration of FIR which has not been explained plausibly by the Complainant; that as per FIR, the incident has taken place at Three Mile SimNalabut as per mashinama the place of incident has been shown the lands of Jabbar Gopang which creates doubt in the prosecution case; that, there is no medical evidence of sodomy so also there is contradiction in ocular and medical evidence which gives inference that the complainant party with malafide intention booked the applicant/accused in this false FIR; that the complainant himself refused for medical checkup and such kind of allegations cannot be proved without medical checkup; that co-accused Aijaz Chandio has been granted post arrest bail by learned 2nd Additional Sessions Judge Badin vide order dated 07.7.2022 and the case of applicant/accused is also on the

same footing, therefore, he is also entitled for concession of bail. He lastly prayed for grant of bail to the applicant / accused.

4. Learned APG argued that the name of accused is given in the FIR with specific role of committing sodomy with minor 13 years boy; that applicant/accused has remained fugitive from law after his rejection of bail by this Court in 2022; that the offence falls within the prohibitory clause of Section 497 Cr.P.C. that there is no enmity or motive on part of complainant to falsely implicate the applicant / accused; that the offence is against the society as such the applicant is not entitled for concession of bail. She lastly prayed for rejection of bail.

5. Heard learned counsel for applicant/accused, learned APG and perused the material available on record.

6. It has transpired from perusal of record that after rejection of 1st bail application by this court on 3.10.2022 the present applicant / accused had absconded. Even in challan sheet he has been shown as absconder. After about 2 years of the alleged incident the applicant has been arrested by police. Such abscondence seems to be willful. The law does not give protection to the person who is fugitive from law especially when he knowingly defeats process of law instead of surrendering. Three P.Ws have already been examined including the victim who have fully corroborated with the prosecution case. Medical evidence in such cases is seen only when there is no corroboration in ocular evidence. The case of co-accused already granted bail is distinguishable from present applicant due to absconsion of applicant / accused. The offence falls within the prohibitory clause and is of heinous nature. Such offence cannot be foisted upon opponents as they carry a stigma of honour upon family. This case is not of pre-arrest bail where grounds of malafide and political enmity are considered. The delay in reporting of such nature of cases where respect and honour is at stake is natural. In light of such observations I am of the view that the case of applicant for bail is not made out. Hence the bail is declined. However, since the trial has commenced and is likely to conclude soon, the learned Trial Court is directed to conclude the trial within three months. The present applicant / accused would be at liberty to approach the Trial Court for bail if the trial is not concluded within the stipulated time period.

JUDGE