

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

**Criminal Bail Application No.S- 40 of 2025.**

Applicants: Paresh S/o Ashok Kumar.  
Through Mr. Kanji Mal Meghwar assisted by Mr. Thakur  
Bhawan Das Raj, Advocate.

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

Complainant: Ishwar Lal  
Through Javed Akhtar Jeendhani, advocate.

Date of hearing: 17.03.2025.

Date of order: 17.03.2025.

**ORDER**

**Dr. Syed Fiaz ul Hasan Shah, J:** Through instant bail application, applicant Paresh seeks his admission to post arrest bail in Crime No.02 of 2025 under section 506(ii) PPC R/W Section 25-D Telegraph Act 1885, registered with P.S Islamkot District Tharparkar. After the arrest applicant preferred his bail plea before the Court of Judicial Magistrate Mithi vide Criminal Bail Application No.04/2025 (Re-Paresh Vs. The State) and same was dismissed vide order dated 22.01.2025. Thereafter applicant/accused preferred his bail plea before the Court of Sessions Judge Tharparkar @ Mithi vide Criminal Bail Application No.37/2025 (Re-Paresh Versus The State) and same was also dismissed vide order dated 07.02.2025; hence, instant bail application has been maintained.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned order passed by the Sessions Court Tharparkar @ Mithi, therefore, there is no need to reproduce the same.

3. It is inter alia contended by the counsel for the applicant/accused that the FIR has been registered with considerable delay of two days. The offence mentioned in the FIR does not fall within the prohibitory clause. He further contended that the matter of

prosecution was adjourned on the ground of Forensic Science Laboratory report, the report has been obtained by the prosecution which shows that the item No.2 subject No.5 "Video" in the conclusion of said report the video data is not retrieved. The counsel for the complainant states that the prosecution has applied and recommended the Anti-Rape (Investigation & Trial) Act 2021 and Investigation Officer has also recommended sections 21 & 22 of PECA Ordinance 2016 invoking provision of cyber stalking. The victim is under medical treatment, as the victim has suffered mental illness and agony and treated at Agha Khan University Karachi and the young girl is victimized, therefore, applicant is not entitled for bail.

4. The learned D.P.G has contended that the applicant/accused is nominated in the FIR and specific role has been assigned, whereas the victim is suffered from mental illness and agony. He also reiterated that Section 21 & 22 of PECA Ordinance 2016 are applied in interim challan and the victim firmly implicated the applicant/accused, as he recorded objectionable video, therefore, the applicant/accused is not entitled for the bail. He relied upon the case laws reported in 2019 PCrLJ 769 and 2018 PCrLJ 408.

5. Heard the counsel for the parties and perused the record. As per statement in FIR and statement recorded under section 161 Cr.P.C, the victim has not alleged that video has been recorded by the applicant/accused, nor the motive has been defined in FIR and statement under section 161 Cr.P.C. I have seen police file and notice that the interim challan has not been presented before the Judicial Magistrate. The prosecution has no document to show that the challan has been presented timely. It is mandatory upon the prosecution to submit interim challan within the period of 14 days. The bail order was rejected on 22.01.2025 by the Judicial Magistrate Mithi, thereafter learned Incharge Sessions Judge Tharparkar @ Mithi has also declined the post arrest bail of applicant/accused vide order dated 07.02.2025. During such period the prosecution has failed to present the interim challan. From the perusal of report of Punjab Forensic

Laboratory the objectionable video of the victim is not available, which is conceded by Mr. Dalwani that the Forensic report is neither supporting the prosecution nor to the Applicant/accused.

6. The case law submitted by learned D.P.G are cases, where the victim had implicated the accused with the motive of extortion money demanded by the accused in that case but in the present case, admittedly neither the extortion/money has been demanded nor the motive has explained in the FIR nor in the statement before the investigation officer nor in the un-presented interim challan. In the present case the victim has not recorded her statement under section 164 Cr.P.C nor the prosecution has presented interim challan before the Judicial Magistrate by applying provision of PECA ordinance 2016, while in the cases relied upon by D.P.G statement under section 164 Cr.P.C was recorded. Furthermore the ground of present bail application is different from the case laws relied upon by D.P.G, therefore, both case laws are distinguishable. On the contrary, no interim or final challan has submitted within stipulated time period, which is violation of Section 173 Cr.P.C.

7. The Supreme Court of Pakistan in case of “Hakim Ali Zardari versus State PLD” (Supreme Court-1) case held that the law of bails is not a static law but it is growing all the time moulding itself with the exigencies of time. The fundamental idea to keep incarceration of an accused in a pending trial case is to prevent repetition of the offence or to avoid destruction of evidence and to procure attendance of an accused person during trial of the case, which obviously coupled with the fact that such purposes has to be accomplished, whilst adherence with legal process and determinative compliance of requirement of law of an accused man's right to liberty, which he enjoys along with other rights, which is overtly recognized as freedom of person or citizen.

8. Guidance can also be taken from the case of “Zaigham Ashraf vs. The State & others” (2016 SCMR 18). The Honorable

Supreme Court of Pakistan held that it is for the prosecution to show sufficient material or concrete record, constituting 'reasonable grounds' that accused has committed an offence falling within the prohibitory limb of Section 497, Cr.P.C whereas the accused has to show that the evidence/material collected by the prosecution creates reasonable doubt in the prosecution.

9. The rule of bail is greatly inspired by the reasonableness of sufficient material of each case on its own inter dependent merits while formulation of tentative assessment on the basic analogy that if the accused is ultimately acquitted after a long process of the trial, the criminal statutory laws do not provide the alternative remedies or as successive parts to act and perform towards effective measures encompasses the concept of reparation or compensation for long incarceration under charge with unproven or without proven guilt. Although the damages for malicious prosecution is available in the civil laws but it would unequivocally incomprehensive and inadequate remedy for indefinite incarceration during trial of case. A prime illustration of this discussion is that the criminal jurisprudence gravitates me that it is not loquacious. In summation, the criminal statutes do not accommodate or standardized the long incarceration if an accused person ultimately acquits from the subjective charge and only exception exists that an accused person if convict, his incarceration period would be considered and culminated into sentence. If one's look gauge the long incarceration through the progressive analysis of statutory provisions of bails. This complex concept in our jurisdiction has silver bullet resolved by the superior courts as intermediary way balancing the criminal jurisprudence and the constitutional rights of citizens on the yardstick of sufficient material against the seeker of bail or any reasonable doubt turn it into case of further inquiry.

10. Prima facie, it is the case of further inquiry. Therefore, the applicant is granted post arrest bail subject to furnishing a solvent

surety in sum of Rs.70,000/- and P.R bond in the like amount to the satisfaction of Trial Court.

11. Needless to say that any finding given or the observations on legal point recorded herein-above is only for the purpose of deciding this bail application, which will not affect the merit of case before the Trial Court in any manner and the Trial Court will try the case without being influenced from any observation.

**JUDGE**

*"Adnan Ashraf Nizamani"*