

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.603 of 2025

Applicant : Ameer Bux son of Dodo Khan,
through Mr. Ahsan Ali Siyal, Advocate

Respondent : The State
Through Ms. Rahat Ahsan, Addl. P.G Sindh

Date of hearing : 21.05.2025

Date of order : 23.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicant Ameer Bux seeks pre-arrest bail in a case bearing crime No. 325/2020, for offence under section 376 PPC of P.S Darakhshan Karachi. Previously the bail of accused was dismissed on 05.12.2024 by the learned Additional Sessions Judge III Karachi South.

2. The prosecution case, as set forth in the FIR, is that the complainant was employed at a residence located in Khayaban-e-Muslim, Phase VI, DHA, Karachi. On 11.07.2020, while she descended to the kitchen to drink water, the applicant, also employed at the same residence, allegedly made an unsolicited proposal of friendship. Upon her refusal, the applicant is stated to have forcibly taken her to his room and subjected her to sexual assault. The complainant initially remained silent about the incident; however, on the following evening, she disclosed the episode to the owner of the house. Acting on this information, the house owner contacted the police emergency helpline (15), whereupon ASI Aslam of Police Station Darakhshan arrived at the scene and took the applicant into custody. Consequently, the present FIR was lodged, encapsulating the above allegations.

3. Learned counsel argued that accused is innocent and falsely implicated in this case. He argued that after seeking bail the applicant proceeded to his native place and due to unavoidable circumstances could not attend the court. He added that being a layman the applicant was not knowing the consequence of absconding, therefore after admitting on bail he become absconcion. He argued that such absence was neither deliberate

nor intentional but was totally circumstances. He argued that the accused may be admitted on bail. He put reliance on the case laws cited at PLD 2007 Karachi 127, 2020 P.Cr.L.J 931, un-reported order of HONorable Supreme Court in Cr. Petition No. 776 of 2024, PLD 2009 SC 427, PLD 2021 SC 903 and 2023 SCMR 172.

4. On the other hand, learned APG for the State primarily raised the accused had been granted bail on 17.08.2022 and thereafter he jumped the bail. The DPG argued that such an act undermines the integrity of the judicial system and calls into question the accused's commitment to complying with the law. He argued that accused absconded after the bail was granted had a direct impact on the trust placed in him by the court and thus he become fugitive from law. Another key argument presented by the learned counsel for the complainant was that the accused, by absconding, was attempting to avoid facing the legal consequences of the trial. The DPG emphasized that this application was not made out of a genuine desire to resolve the case, but rather as a tactical move to escape accountability. He claimed, such actions amount to the abuse of the legal process and are contrary to the principles of justice. It was also argued, if the accused is granted bail once again, there was a significant risk that he would abscond once more, as he had done previously and further that the accused's past behavior demonstrated a clear pattern of evasion, which could potentially disrupt the ongoing trial. Granting bail under such circumstances would not only be detrimental to the progress of the case but could also encourage the accused to evade justice again. The DPG underscored that the risk of absconding should not be taken lightly, as it would prolong the trial and undermine the efforts of the court to reach a fair conclusion. He emphasized that granting bail to someone who had previously absconded would set a dangerous precedent. Such a decision could encourage other accused individuals to exploit the bail process for personal gain, knowing that they may be granted bail even if they have previously absconded. The DPG stressed that allowing such behavior would undermine the credibility of the judicial system, eroding public confidence in the fairness of the legal process. The potential for abuse of the bail system was presented as a critical factor in opposing the application. Lastly, he argued that the accused's actions in absconding had already disrupted the trial process, and granting bail would only further hinder the fair and timely resolution of the

case. The defense of the accused in absconding was seen as a direct attempt to delay and obstruct the legal proceedings. The DPG highlighted the importance of upholding the integrity of the trial process and ensuring that the accused is held accountable for his actions. Allowing the accused to delay the proceedings further would undermine the court's ability to achieve justice in a timely manner. He relied upon the case law cited at 2005 P.Cr.L.J 748, PLD 1985 Supreme Court 402, 2023 MLD 520.

5. At the very outset of hearing, this court put a query that whether an accused who is fugitive from law is entitled for bail or otherwise, to which the learned advocate for applicant dilated upon the case laws cited at PLD 2007 Karachi 127, 2020 P.Cr.L.J 931, un-reported order of Honorable Supreme Court in Cr. Petition No. 776 of 2024, PLD 2009 SC 427, PLD 2021 SC 903 and 2023 SCMR 172, however all these cases pertaining to the grant of bail to an absconders on the basis that the mere absconcion would not come in the way while granting the bail to the accused when otherwise his case falls within the remits of granting the bail. Much to the chagrin to the case of applicant, it is noteworthy to mention here that there is much difference between the fugitive from law and the case of absconders. Absconders and fugitives from law are terms often used interchangeably, but they carry distinct legal implications: An absconder is an individual who deliberately avoids or evades the judicial process, typically after being granted bail or during the course of an investigation. The term is used when an accused person absents himself from the court proceedings without notifying the authorities or providing a valid reason for his absence. Abscondence can be temporary, and the individual may later return or surrender to face trial. The action of absconding is often a means to delay or evade the legal process, and such individuals can still be brought to justice once their whereabouts are known. However, a fugitive from law, on the other hand, refers to an individual who has committed a crime or is under investigation, and deliberately escapes the jurisdiction of the authorities with the intent of permanently avoiding prosecution. A fugitive is typically a person who has absconded for a prolonged period, may have gone into hiding, and has no intention of returning to face justice. The term fugitive carries a more serious connotation, as such individuals are often declared proclaimed offenders by the court. A fugitive is someone actively avoiding justice by fleeing and may be subject to international arrest

warrants or extradition procedures. Thus, while an absconder may return or face trial at some point, a fugitive is considered someone who has permanently evaded the law with no intent to return to legal proceedings.

6. From the record it appears that the applicant/accused was initially granted bail in Bail on 17.08.2020, wherein he undertook to fully cooperate with the trial proceedings. However, it is noteworthy that soon after seeking bail, the accused absconded, thus evading the legal process. This abscondence raises serious concerns regarding the accused's intentions and his willingness to cooperate with the judicial system. The voluntary absence of the accused during the trial not only undermines the trust placed in him when bail was granted but also hampers the progression of the trial. The behavior of the accused, absconding and now seeking bail, strongly suggests an intention to avoid facing the consequences of the trial. This conduct reflects an attempt to evade the inevitable conviction. Such actions by the applicant/accused amount to a misuse of the legal process, which is against the principles of fairness and justice. The previous abscondence raises a significant concern that if granted bail, the accused may abscond once more, further disrupting the trial and delaying its fair and timely conclusion. Granting bail in this context would undermine the credibility of the judicial system and set an undesirable precedent.

7. The learned counsel for the applicant, in his arguments, contended that the abscondence of the applicant was not willful and deliberate. In support of his submission, the learned counsel relied upon the reported case laws referred hereinabove, which are misconceived. As such in the present case, due to the prolonged abscondence of the accused, his bail was canceled, and the surety was forfeited. In this regard, I am also guided by the unreported judgment in *Criminal Petition Nos. 562, 563, and 564 of 2019*, decided by the Honorable Supreme Court of Pakistan on 25.07.2019. The relevant portion of the order is reproduced as follows:

"Before parting with this order, we would like to observe that these petitions seeking cancellation of the private respondents' bail are, even otherwise, misconceived because the impugned judgments passed by the High Court show that during the pendency of the proceedings before the High Court, the private respondents in these petitions had failed to appear, and resultantly, non-bailable warrants for their arrest had been issued, which could not be executed. The law already stands settled that if an accused person admitted to bail is subsequently declared a Proclaimed Offender or non-

bailable warrants for his arrest are issued, then such declaration or issuance of non-bailable warrants ipso facto amounts to cancellation of that accused person's bail. A reference in this respect may be made to the case of Yousuf Masih v. The State (1987 O.Cr.L.J. 1412), Muhammad Boota v. Muhammad Arshad and another (Criminal Miscellaneous No. 1481-CB of 2009 decided by the Lahore High Court, Lahore on 09.02.2009), Sharafat Ali v. The State, etc. (Criminal Revision No. 680 of 2008 decided by the Lahore High Court, Lahore on 15.04.2009, which order was subsequently upheld by this Court through the order dated 04.06.2009 passed in Criminal Petition No. 438-L of 2009), and Atta-ur-Rehman v. Rana Phool, etc. (Criminal Petition No. 558-L of 2014 decided by this Court on 17.07.2014)."

8. I would also like to emphasize upon the landmark judgment of the Honorable Supreme Court of Pakistan in case of *Rana Muhammad Arshad Vs. The State* (PLD 2009 Supreme Court 427), wherein the Honorable Supreme Court of Pakistan was pleased to held that:

“(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to B disagree and dishonour him;

*(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that **he had not been a fugitive at law**; and finally that;*

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instant i.e. the Court of Session, before petitioning the High Court for the purpose.”

[Bold & underlined is provided for emphasis]

9. Based on the facts, circumstances, and case law cited, I find that the applicant/accused is not entitled to the concession of bail. Accordingly, his bail application is dismissed. The bail granted to the applicant is hereby recalled, his bail bond is canceled, and the surety is discharged. The applicant is taken into custody and remanded to jail to be produced before the learned trial court where the original case is being proceeded.

J U D G E