

1208
07/08/2024

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT

Criminal Misc. Application No. 149 of 2024.

Bashir Ahmed S/O Ghulam Shabbir,
Muslim, adult, by caste Qambrani,
R/O Village Mir Muhammad Khoso,
Taluka Kotri, District Jamshoro.

APPLICANT/
COMPLAINANT.

VERSUS

✓ 1. Ghulam Sarwar S/O Muhammad Yousif,
Adult, Muslim, by caste Checma,
R/O Birahmani Paro, Brohi Chowk,
Kotri, District Jamshoro.

✓ 2. Ghulam Muhammad S/O Basar Khan,
Adult, Muslim, by caste Joyo,
R/O H. No. B/09, Society, Phasc-II,
Jamshoro.

3. The State.

RESPONDENTS.

- Crime No. 20 of 2024.
- U/S 377 PPC
- Date & time of offence: - 06.02.2024 @ 1000 hours.
- Date & time of report: - 10.02.2024 @ 1800 hours.
- P.S. Jamshoro.

APPLICATION UNDER SECTION 497(5) Cr.P.C.



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

Cr. Misc. Appl. No. S- 149 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
10.02.2025	

For orders on office objections
For hearing of main case
For hearing of MA 10963/24

Mr. Imam Ali Chang, Advocate for Applicant / Complainant
Mr. Shabbir Hussain Memon, Advocate for Respondents / Accused
Mr. Irfan Ali Talpur, A.P.G.

MIRAN MUHAMMAD SHAH, J.- Counsel for the Applicant has challenged the Order dated 27.02.2024 passed by learned Additional Sessions Judge, II Kotri granting bail to accused/ Respondents Ghulam Sarwar son of Muhammad Yousif and Ghulam Muhammad son of Basar Khan. The Applicant / Complainant has moved this Application under Section 497(5) Cr.P.C. for cancellation of bail and setting aside the below 'bail granting Order. The operative part of the order is reproduced as under:-

"5. Heard. Record Perused. In this case the incident had occurred on 06.02.2024 and the FIR was lodged on 10-02-2024. The accused was arrested on 11-02-2024 and the statement under Section 164 Cr.P.C. of the victim was recorded on 17-02-2024 with the day of 06-days of the arrest of the accused and 11- days of the incident. The Applicant / accused No.2 per contention of the learned defence Counsel and the police record show that he is aged 64-years and suffering from hypertensive and diabetic. The police record further shows that he is passing a married life and having a son and four daughters. The Applicant No. 01 is servant of the Applicant / accused No. 02, who is working at his cattle pond. According to the FIR, the applicants / accused used force by slapping the victim and tied his feet while committing the zina but the medical certificate tentatively shows that no visible injury either on his body or his private parts even no visible tears were seen in the anal area of the victim. Hence, matter calls for further enquiry and the applicants / accused are entitled for the concession of bail. Besides that the investigation almost completed and the applicants / accused are in the judicial custody and no more required for further investigation.

6. In view of the above circumstances, the applicants / accused are admitted to bail subject to furnishing solvent surety in the sum of Rs. 50,000/- (Rupees Fifty Thousand) each and to execute P.R bonds in the like amount to the satisfaction of this Court. Observations made hereinabove are tentative in nature.

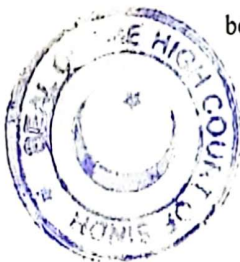


2. Counsel for the Applicant / Complainant in support of his contention has stated that the offence falls within the prohibitory clause of Section 497 Cr.P.C. therefore, the Respondents / accused are not entitled for grant of bail. The case is of committing sodomy of a boy aged about 12/ 13 years which is a grievous offence and in fact is an offence against society resulting in causing mental disturbance amongst the public at large. According to him there was sufficient material available on record before the Trial Court for not granting bail to the Respondents / accused. The Respondents / accused after obtaining bail is constantly harassing and intimidating the Complainant / victim party. All the P.Ws have supported the version of Complainant and the medical evidence is not in conflict with ocular evidence.

3. Learned APG along with Counsel for Respondents / accused have stated that the matter is now ripe for trial and the Complainant can lead evidence right away and prove his case based on material evidence especially when it is contended by the Applicant / Complainant that his P.Ws as well as medical evidence are in full support.

4. This being the case, this Court had earlier passed the order dated 6.1.2025 directing the Trial Court to expedite the matter and conclude the same within a period of sixty (60) days; however, the Counsel for the Applicant / Complainant admittedly had not complied with the order of this Court and not even a single P.W has been examined in past one month. Perhaps it seems that the Complainant party is more interested in sending the Respondents / accused behind bars than bringing his own case before the Trial Court for evidence expeditiously. In such circumstances, it has been held by the Superior Courts that merely sending the accused behind bars should not be the motive of the Complainant party; however, in this case that seems to be so. That based on the material placed before me, I am of the view that the case at this stage is of trial and not of cancellation of bail which was granted to the Respondents / accused about one year ago. I therefore, direct the Trial Court once again to expeditiously hold the trial, lead evidence of atleast three main witnesses along with their medicolegal evidence within a period of sixty (60) days and then if it is of the opinion that sufficient material has been brought before it, it may decide the matter within the stipulated time.

This Cr. Misc. Application with such observations stand dismissed.



CERTIFIED TRUE COPY
30/1/25
MIRAN MUHAMMAD SHAH
JUDGE

30/1/25
MIRAN MUHAMMAD SHAH
JUDGE