

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2659 of 2025

Applicant : Dr. Mubina Cassum Agboatwala
daughter of Cassum Agboatwala
through Mr. Shahab Sarki, Advocate
along with Mr. Rajesh K. Ambwani,
Advocate

Respondent : The State, through Mr. Sharaf-u-Din
Jamali, Assistant Attorney General,
Pakistan along with Inspector-Babar
Ali, FIA, AHT Circle, Karachi

Date of Hearing : 24.10.2025

Date of Decision : 05.11.2025

ORDER

Jan Ali Junejo, J.- The applicant, Dr. Mubina Cassum Agboatwalla, seeks *post arrest bail* under Section 497 of the *Code of Criminal Procedure, 1898*, in FIR No. 212 of 2025, registered at Police Station FIA Anti Human Trafficking Circle, Karachi, for offences under Sections 3, 4 and 6 of the *Prevention of Trafficking in Persons Act, 2018* (as amended in 2025). It may be noted that the applicant had earlier moved an application for *pre arrest bail* before the learned Special Judge (Central) II, Karachi, which was dismissed on 04.08.2025. Consequently, she was taken into custody, and thereafter, her post arrest bail was also declined by the same Court on 23.09.2025, leading to the present application before this Court.

2. The brief facts of the prosecution case, as emerging from the record, are that the applicant, Dr. Mubina Cassum Agboatwalla, being Chairperson of the NGO *Health Oriented Preventive Education (HOPE)*, is alleged to have facilitated the transfer of abandoned infants to foreign nationals under the pretext of adoption, thereby committing acts falling within the ambit of "trafficking in persons" as defined under the *Prevention of Trafficking in Persons Act, 2018* (as amended in 2025). It is the case of the prosecution that the said NGO was not registered as an orphanage or duly authorized adoption agency under the relevant laws, yet several guardianship petitions were filed before Family Courts on identical statements of abandonment, and doing illegal work seems to be gain the huge payments. The matter originated from a written communication dated 15.09.2023 issued by U.S. Consulate General, Karachi, addressed

to the Director FIA, Karachi Zone, highlighting alleged irregularities in inter-country adoptions processed through *HOPE*. Pursuant thereto, Enquiry No. 771/2023 was initiated by the FIA, Anti-Human Trafficking Circle, Karachi, which, upon completion, culminated in registration of FIR No. 212/2025 under Sections 3, 4 and 6 of the aforesaid Act. During investigation, the FIA collected various documents, including guardianship orders, correspondence with adoptive families, and records from the Social Welfare Department, and formed the opinion that despite absence of requisite authorization, the applicant and her associates had arranged custody of minors for foreign families without intimation to police or child protection authorities. On the strength of this material, the applicant was arrested and the case challan was submitted before the competent Court, alleging that her actions constituted facilitation of *trafficking in persons*, punishable under the relevant provisions of law.

3. Learned counsel for the applicant, Mr. Shahab Sarki, contended that the applicant is a 66-year-old medical professional, social worker, and Chairperson of a duly registered welfare organization engaged in health and educational services for over two decades. It was submitted that the infants in question were *abandoned children* who were placed with adoptive parents through *lawful guardianship orders* passed by competent Family Courts under the *Guardians and Wards Act, 1890*, after publication of notices and observance of due process. Learned counsel argued that there is no allegation or evidence of coercion, deception, exploitation, or monetary gain—ingredients essential to constitute the offence of *trafficking in persons* under Section 3 of the *Prevention of Trafficking in Persons Act, 2018*. The entire evidence is documentary in nature, investigation stands concluded, and the challan has been submitted; hence, no recovery or further interrogation is required. It was further urged that the alleged acts pertain to a period prior to the promulgation of the said Act, and retrospective application of penal law is constitutionally barred. Being a woman and senior citizen with no criminal antecedents, the applicant was stated to be entitled to the statutory concession provided under the first proviso to Section 497(1), Cr.P.C.; therefore, learned counsel prayed that the applicant be enlarged on bail pending trial.

4. Conversely, the learned Assistant Attorney General, appearing for the State, opposed the grant of bail and argued that the allegations against the applicant are of a serious and sensitive nature involving cross-border transfer of minors, which warrants a cautious approach. It was contended that the applicant's NGO was not authorized to function as an

orphanage or adoption agency and that the repeated filing of guardianship petitions containing identical narratives of abandonment reflects a systematic pattern suggestive of fabrication and misuse of judicial process. Learned law officer further submitted that the offence under the *Prevention of Trafficking in Persons Act, 2018* carries severe punishment and falls within the prohibitory clause, thus disentitling the applicant to discretionary relief. He, therefore, prayed for dismissal of the bail application.

5. I have considered the arguments advanced by the learned counsel for the respective parties and have carefully examined the material available on record with the degree of tentative assessment permissible at the bail stage. The offence alleged under Sections 3, 4, and 6 of the **Prevention of Trafficking in Persons Act, 2018** carries punishment extending to ten years and beyond, thus squarely attracting the **prohibitory clause of Section 497(1), Cr.P.C.** It is settled law that at the bail stage, only a tentative evaluation of the available material is permissible, without embarking upon a detailed appraisal or conducting a mini-trial. The record, however, discloses certain significant aspects which cannot be lightly ignored: (i) Verification from the Social Welfare Department categorically confirms that *HOPE* was neither registered as an orphanage nor authorized to process adoptions or custody placements of minors; (ii) The admitted non-reporting of allegedly abandoned children to the Police, Child Protection Bureau, or any competent authority constitutes a grave breach of statutory obligations under the child welfare regime; (iii) The use of identical facts and templates in multiple guardianship petitions reflects a discernible pattern of falsification; (iv) The processing of passports and visas on the basis of NGO-issued documents indicates coordination extending beyond mere humanitarian activity; (v) Several adoptive parents were not present in Pakistan at the relevant time of custody transfer, yet judicial orders were procured in their favor; and (vi) Two minors, namely Kassim and Sulaiman, were personally retained by the applicant without following any lawful adoption procedure.

6. These facts, when considered collectively, disclose a prima facie chain of conduct that squarely falls within the definitions of “*recruitment, transfer, and receipt of children for the purpose of exploitation*” as contemplated under Section 3 of the *Prevention of Trafficking in Persons Act, 2018*. The contention that the proceedings are vitiated merely because the case originated from information supplied by the U.S. Consulate is misconceived. It is well-settled that the FIA is competent to act upon credible information from any source, whether domestic or

foreign, particularly where the alleged acts involve transnational elements or offences against human dignity. The absence of a local complainant is, therefore, of no legal consequence; what is material is the credibility of the source and corroboration through independent verification, both of which stand established from the departmental inquiry and supporting documentary record.

7. While Section 497(1), Cr.P.C. permits the grant of bail to a woman in appropriate cases, such discretion is not absolute. Courts have consistently held that the leniency embodied in the first proviso does not extend to cases involving grave, organized, or transnational offences, particularly where the accused's role appears central to the commission of the crime. The first proviso to Section 497(1), Cr.P.C., is intended as a measure of protection and compassion, but it cannot be invoked as a blanket entitlement in all circumstances. In exceptional situations, such as where the lives or safety of minors are endangered, or where the offence involves human trafficking, which is recognized as an offence against society at large, the Court may justifiably decline the concession of bail even to a woman accused. In the present case, the material available on record does not bring the matter within the ambit of further inquiry under Section 497(2), Cr.P.C. On the contrary, there exist reasonable grounds to believe that the applicant was directly involved in the systematic facilitation of illegal transfers of minors abroad. Furthermore, the record reflects that the applicant remained unavailable for arrest for a considerable period, and the investigation is still in progress, circumstances which further militate against the grant of bail.

8. For the foregoing reasons, and upon a tentative assessment of the material available on record, I am of the considered view that reasonable grounds exist to believe that the applicant is *prima facie* connected with the commission of offences punishable under Sections 3, 4, and 6 of the Prevention of Trafficking in Persons Act, 2018 (as amended in 2025). The case does not attract the principle of further inquiry within the meaning of Section 497(2), Cr.P.C., nor does it fall within the ambit of discretionary relief contemplated under the first proviso to Section 497(1), Cr.P.C. Consequently, the Criminal Bail Application filed on behalf of the applicant, being bereft of merit, stands dismissed.

9. The observations made herein are tentative in nature and confined solely to the purpose of this Order. They shall not prejudice or influence the learned trial Court while deciding the case on merits.

JUDGE