

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 3054 of 2025

Applicant: Akhter Zaman through Mr. Abrar Ahmed, Advocate.

Respondent: The State through Ms. Rubina Qadir, Addl. P. G. Sindh.

Date of hearing: 29.01.2026.

Date of order: 29.01.2026.

### ORDER

**TASNEEM SULTANA, J.**- Through this criminal bail application, the applicant seeks pre-arrest bail in Crime No. 475 of 2025, registered under Sections 377/377-B P.P.C. at Police Station Mubina Town, Karachi. Having been rejected his earlier bail before arrest application No. 4191 of 2025 by the learned Additional Sessions Judge-VII / Special GBV Court, Karachi-East vide order dated 15.09.2025, the applicant has approached this Court for the same concession.

2. Brief facts of the prosecution case is that the complainant Abdul Rehman alleged that on 02.09.2025 at about 05:15 p.m., his son Muhammad Faizan, aged about 14 years, returned home in a distressed and weeping condition and disclosed that the present applicant, being resident of the same locality, intercepted him while he was returning home after Madrasa; that the applicant, on the point of a weapon, compelled him to remain silent and forcibly took him inside his house; it is further alleged that the applicant removed the shalwar of the victim as well as his own, whereupon the victim raised cries; on hearing the same, ladies present in the house came there, spoke in Pashto and thereafter the applicant expelled the victim from the house; thereafter, the victim returned home and narrated the incident to the complainant, whereafter the present FIR was lodged.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case with mala fide and ulterior motives; that the parties are residents of the same locality; that prior to the present case, brother of the applicant had lodged FIR No.265/2018 at P.S. Mobina Town and during investigation suspicion was raised against complainant side and Jirga was held wherein complainant

was found at fault, thereafter, to save his skin, complainant lodged the present FIR as counterblast; that there is delay and unnatural conduct in lodging the FIR as alleged incident is stated to have occurred at about 05:15 p.m. whereas FIR was lodged at about 07:50 p.m. without issuance of medical letter, which creates serious doubt in prosecution story; that no independent private witness has been associated with the alleged occurrence; that earlier dispute also existed between the parties regarding installation of cabin in front of shop of applicant and upon refusal by applicant, complainant developed grudge; that the medical evidence does not *prima facie* support the prosecution version as the medico-legal examination does not reflect signs of violence on the body of alleged victim; that as per report of Sindh Forensic DNA and Serology Laboratory, no seminal material was detected on internal or external anal swabs of the victim and consequently no further DNA analysis was carried out, which circumstance *prima facie* renders the prosecution allegation doubtful and brings the case within the ambit of further inquiry; that the statement of the victim under Section 164 Cr.P.C. was recorded with delay which aspect also requires deeper probe during trial; that the essential ingredient of penetration is not *prima facie* established, therefore applicability of Sections 377/377-B P.P.C. is a matter requiring evidence and further inquiry and at the most the allegation may fall within the ambit of attempt attracting Section 511 P.P.C., which would take the matter out of the prohibitory clause, therefore interim pre-arrest bail may be confirmed.

4. Conversely, learned D.P.G assisted by learned counsel for the complainant opposes the bail application and submits that the applicant is directly nominated in the FIR with specific role; that the allegation pertains to a grave offence involving a minor; that the victim has supported the prosecution case and his statement has been recorded during investigation including under Section 164 Cr.P.C.; that absence of seminal material is not conclusive in view of explanation contained in the forensic report; that sufficient incriminating material is available on record connecting the applicant with the commission of alleged offence; and that the offence carries severe punishment and falls within the prohibitory clause, therefore, the applicant is not entitled to the extraordinary relief of pre-arrest bail.

5. Heard. Record perused.

6. From tentative assessment of the material available on record, it appears that the prosecution case primarily rests upon the version of the complainant and victim. The medical and forensic material, at this stage, requires deeper probe and proper appreciation after recording of evidence.

7. As far as the applicability of Section 377-B P.P.C. is concerned, the same is required to be examined by the trial Court after recording evidence, particularly with regard to proof of essential ingredients of the offence. It appears from the record that the complainant was allegedly informed after the occurrence, and other witnesses are stated to have reached the place subsequently and did not witness the actual occurrence. Further, no independent person from the locality has come forward to substantiate the version of the complainant. Similarly, the medico-legal material of the alleged victim does not *prima facie* support the version of the complainant so as to demonstrate signs of violence on the body of the victim, nor has any seminal material been detected from the clothes or biological samples of the victim.

8. Furthermore, the applicability of Section 377 P.P.C., also becomes a matter requiring further inquiry. Even if, for the sake of arguments, the allegation of the complainant is tentatively taken into consideration, the question whether the alleged act constitutes completed offence or merely an attempt is a matter to be determined by the learned trial Court. In such eventuality, recourse may be made to Section 511 P.P.C., which provides punishment for attempt to commit an offence where no specific provision exists. The offence under Section 377 P.P.C. carries punishment extending to imprisonment for life or imprisonment of either description for a term not less than two years and not exceeding ten years and also fine; therefore, in case of attempt, punishment may extend to one-half of the maximum prescribed punishment, which comes to five years.

9. The august Supreme Court has consistently held that grant of bail in offences not falling within the prohibitory clause of Section 497 Cr.P.C., is to be treated as a rule and refusal is an exception. The subordinate Courts are bound to follow such principles in letter and spirit in view of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973. Guidance in this regard is drawn from the cases of *The State v. Syed Qaim Ali Shah* (1992 SCMR 2192), *Tariq Bashir v. The State* (PLD 1995 SC 34) and *Khan Asfandyar Wali v. Federation of Pakistan* (PLD 2001 SC 607).

10. The concession of pre-arrest bail cannot be withheld by way of premature punishment, particularly in circumstances where no fruitful purpose would be served by sending the applicant behind bars for an indefinite period in a case where the medico-legal officer, after semen analysis, medical history, physical examination, DNA report and serology testing, has opined that there is no conclusive evidence linking the applicant or any other suspect with the alleged offence. The forensic DNA report

further reflects that the anal swab samples and clothing of the victim did not contain any semen stains or sperm fractions. Reliance in this regard is placed upon the cases of Abid Ali alias Ali v. The State (2011 SCMR 161) and Husnain Mustafa v. The State (2019 SCMR 1914). In these circumstances, the applicant has *prima facie* made out a case for grant of relief of pre-arrest ba

11. For the foregoing reasons, this bail application is allowed and the interim pre-arrest bail earlier granted to the applicant vide order dated 06-11-2025 is hereby confirmed on the same terms and conditions, subject to furnishing additional surety in the sum of Rs.150,000/- (Rupees One Hundred Fifty Thousand only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

12. The observations made hereinabove are tentative in nature and shall not prejudice either party at trial. The learned trial Court shall make efforts to conclude the trial expeditiously, preferably within four months, and shall ensure examination of the complainant/victim at the earliest, preferably within one month. In case the charge has not yet been framed, the same shall be framed on the next date of hearing after completing codal formalities.

**JUDGE**

Nadeem