

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Criminal Bail Application No.S-164 of 2026
[Ali Raza Shaikh v. The State]*

Hearing of bail application

*For orders on office objection at flag 'A.'
For the hearing of the post-arrest bail application.*

16.03.2026.

M/s Abdul Salam Abbasi and Fahmida Mirani, Advocates for
the Applicant
Mr. Muhammad Raza Katohar, Deputy Prosecutor General for
the State

ORDER

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Ali Haider 'Ada' J. Through this criminal bail application, the applicant, namely Ali Raza Shaikh, seeks post-arrest bail in Crime No. 36 of 2025 for an offence under Section 377-B, P.P.C., registered at Police Station Newpind, Sukkur.

2. The facts of the prosecution case, briefly stated, are that on 13.04.2025, the complainant, Shoaib Hussain Shaikh, lodged the FIR at Police Station Newpind, Sukkur, stating that on 01.03.2025, he along with his relatives Meer Muhammad and Haider Ali were present at his house, while his minor son, namely Afaq Ahmed, aged about 6/7 years, was flying a kite on the roof. In the meantime, the present applicant, being a neighbour, came and enticed the minor on the pretext of flying kites behind the Railway depot and took him away. Shortly thereafter, the complainant heard the cries of his son and rushed to the spot, where he, along with witnesses, allegedly saw the applicant committing zina with the minor while holding a broken glass bottle. The occurrence took place at about 3:00 p.m., and the accused fled from the scene. The complainant found that the shalwar of his son had been removed, he was bleeding and unconscious. The child was immediately taken for medical treatment at Civil Hospital, Sukkur. Thereafter, the complainant approached the Court for registration of the FIR, which was allowed, and subsequently the FIR was lodged.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated in the present case. He argued that there is an inordinate and unexplained delay of one month and twelve days in lodging the FIR, which creates serious doubt about the prosecution's version. He further submitted that the applicant is a minor boy, aged about 14 years, and, therefore, it is highly improbable that he could have conceived or committed such an offence. It was also contended that the medical certificate has been managed by the complainant. Learned counsel further argued that the applicant was earlier arrested in a case under Section 392, P.P.C., and upon a raid conducted by the applicant's father at the police station, he was found present there. However, the police officials, in collusion with the complainant, subsequently registered the present false case merely to teach a lesson to the applicant, thus falsely implicating him. In support of his contentions, learned counsel placed reliance upon the case law reported as 2004 P.Cr.L.J 490, 2009 P.Cr.L.J 780, 2020 YLR Note 59, 2024 MLD 1962, and 2025 P.Cr.L.J 1279.

4. On the other hand, the learned Deputy Prosecutor General vehemently opposed the grant of bail to the applicant, contending that he is specifically named in the FIR with allegations of enticing and taking away the victim on the pretext of flying kites. It was further submitted that the applicant was seen committing zina with the victim, thereby directly implicating him in the commission of the offence. The learned Deputy Prosecutor General argued that the offence is heinous in nature, affecting not only the individual but society at large, and falls squarely within the prohibitory clause of Section 497, Cr.P.C. Accordingly, he submitted that the applicant is not entitled to the concession of bail and prayed for dismissal of the instant bail application.

5. The complainant, Shoaib Hussain, is present and has raised no objection to the grant of bail on the ground that the applicant party has made a mercy appeal. However, he affirmed the contents of the FIR and submitted that the occurrence was caused by the hands of the applicant.

6. Heard and perused the material available on record.

7. Admittedly, the applicant has been named in the FIR. The offence with which he is charged falls within the prohibitory clause of Section 497, Cr.P.C. The ocular account recorded in the FIR is prima facie corroborated by the medical evidence. Although there is a specific allegation against the present applicant, it appears that, in good faith, he committed the act intending to mislead or influence the child, thereby establishing a chain of circumstances that militates against the grant of bail. Reliance is placed upon the case of *Abdul Manan vs. The State (2023 P.Cr. L.J 73)*.

8. Further, it is observed that Section 8 empowers the Investigating Officer to conduct an inquiry regarding the determination of age. However, as submitted by the learned Deputy Prosecutor General, no birth certificate or conclusive documentary proof regarding the applicant's age has been made part of the investigation record. Therefore, at this stage, this Court cannot embark upon a deeper appreciation of evidence, and the question of age will have to be determined during trial.

9. In the case of *Arsalan Khan vs The State 2025 YLR 1693*, it was held that:

*7. Sections 377A and 377B, introduced through the Criminal Law (Second Amendment) Act of 2016, establish the offence of sexual abuse. Section 377A defines sexual abuse as any act or series of acts involving the employment, use, coercion, persuasion, inducement, enticement, or forceful engagement of a person in sexually explicit conduct when the victim is under eighteen years of age. Such conduct includes, but is not limited to, fondling, stroking, caressing, exhibitionism, voyeurism, or any other form of obscene or sexually explicit behavior, whether real or simulated. Notably, this provision applies regardless of the victim's consent and covers both standalone acts and those occurring in conjunction with other offences. Meanwhile, Section 377B prescribes the penalties for individuals convicted of sexual abuse as defined under Section 377A. Given that the Applicant is, prima facie, linked to the charges under Sections 377, 511, and 377A of the Pakistan Penal Code, 1860, read in conjunction with Section 377B, the Applicant is not eligible for bail at this current stage. In a parallel legal context, the Islamabad High Court adjudicated in *Nauman Hussain v. The State and Another (2022 MLD 958)*, wherein it was authoritatively observed that: "Even otherwise, under section 377-A, P.P.C, in order to constitute offence of section 377-B, P.P.C., no actual penetration is required and the*

offence is committed even where there is stroking, caressing, exhibitionism, etc. and the modes exhaustive. Moreover, report by the Director, FIA is categoric that offence under section 377, P.P.C. has been committed. For what has been stated above, the instant petition is without merit and is accordingly dismissed".

10. In view of the foregoing, the applicant has failed to make out a case for the grant of post-arrest bail. Accordingly, the bail application is dismissed. It is needless to say that the observations made hereinabove shall not influence the trial court, which shall decide the case on its own merits.

JUDGE