

IN HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**Criminal Bail Application No.S-1511 of 2025.**

Applicant: Ayaz through Mr. Dilbar Khan Laghari, Advocate.

Respondent: The State through Mr. Altaf Hussain Khokhar, Deputy Prosecutor General alongwith complainant Shabbir Ahmed and Investigation Officer SIP Ghulam Hussain.

Date of hearing: 13.01.2026.

Date of Decision: 13.01.2026.

ORDER

ALI HAIDER 'ADA', J.- Through this bail application, the applicant seeks post-arrest bail in Crime No. 383 of 2025, registered at Police Station Husri, Hyderabad, on 27.10.2025, on the complaint of Shabbir Ahmed, for offences punishable under Sections 376 and 511, PPC.

2. Briefly, the complainant narrated in the FIR that on 25.10.2025 his wife, namely Mst. Fahmida, disclosed that when her mother-in-law had left the house to attend a funeral ceremony, at about 1500 hours, the accused Ayaz entered the house and forcibly attempted to rape her. It was further alleged that when Mst. Gulbano, the mother-in-law, intervened, the accused fled away. Thereafter, upon receipt of a letter from the concerned police station and after medical examination, the FIR was lodged.

3. After registration of the FIR, the accused was arrested. He approached the learned trial Court for the grant of post-arrest bail; however, his request was declined.

4. Learned counsel for the applicant contends that there is an unexplained delay in the registration of the FIR, as the alleged incident took place on 25.10.2025, whereas the FIR was lodged on 27.10.2025. He further submits that the statement of the victim under Section 164, Cr.P.C, was not recorded and that the case was not investigated under the Anti-Rape (Investigation and Trial) Act, 2021, despite the availability of a proper statutory mechanism. He argues that even from a bare reading of the FIR, the allegation pertains only to an attempt and not to the commission of rape; therefore, the offence does not fall strictly within the ambit of Section 376, PPC. On these grounds, he prays for grant of post-arrest bail.

5. Conversely, learned State Counsel, Mr. Altaf Hussain Khokhar, submits that although the matter was not investigated under the Act, 2021, medical evidence is available on record showing bruises on the body of the victim, which may suggest the possibility of sexual assault. However, he fairly concedes that an attempt to commit rape is not covered under the definition of Section 376, PPC. Despite this, he supports the impugned order and contends that the applicant is not entitled to the concession of bail.

6. The complainant and the Investigating Officer, adopting the arguments of the learned Law Officer, submit that the applicant is fully involved in the offence. It is further alleged that the applicant confined the children in a room and thereafter attempted to commit the offence, as narrated in the FIR. They, therefore, support the contents of the FIR and oppose the bail application.

7. Heard and perused the material available on record.

8. Section 376, PPC, is a scheduled offence under the Anti-Rape (Investigation and Trial) Act, 2021 ("the Act-2021"). The main object of the said Act is to ensure expeditious redressal of rape and sexual abuse crimes through a Special Investigation Team, the constitution of which is mandatory in nature upon the Act coming into force. However, in the present case, the prosecution failed to constitute any Special Investigation Team as mandated under the Act of 2021. Moreover, the statement of the victim under Section 164, Cr.P.C., was not recorded. These lapses demonstrate that the prosecution itself did not proceed in accordance with the provisions of the said Act, which are essential for determining the facts of the case and for giving effect to the very preamble and object of the Act-2021. If the law requires a particular thing to be done in a particular manner, it must be done accordingly; otherwise, it would not comply with the legislative intent. Reference be made from the case of **Zia ur Rehman v. Syed Ahmed Hussain and others** 2014 SCMR 1015 and the case of **SECRETARY, MINISTRY OF FINANCE, FINANCE DIVISION, GOVERNMENT OF PAKISTAN and others Versus MUHAMMAD ANWAR** 2025 S C M R 153.

9. On such aspect, Section 9 of the Anti-Rape (Investigation & Trial) Act, 2021 provides a mechanism. For ready reference, the same is reproduced as under;

“9. Investigation in respect of scheduled offences. – (1) For the purposes of investigation under this Act, special sexual offences investigation units (SSOIUs) shall be established in every district by the provincial governments and for the purposes of the Islamabad Capital Territory by the Federal Government.

(2) The SSOIU shall comprise police officers who have received training on investigation in relation to sexual offences and preferably one member of the unit shall be a female police officer.’

(3) The investigation in respect of offences mentioned under this Act shall be carried out as follows:-

(i) for offences mentioned in Schedule-I, by the SSOIU; and

(ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.

(4) In case the complainant in relation to an offence under Schedule-II expresses dissatisfaction which is based on reasonable grounds, the investigation shall be transferred to the district head of investigation of the police.

(5) The officers of the SSOIUs shall ordinarily be from the area in which the occurrence of the offence has taken place:

Provided that in exceptional circumstances, and where the dictates of fair, accurate and technical investigation warrant otherwise, officers from areas other than the area of occurrence, may be deputed in the SSOIUs.

(6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.”

10. No doubt, in rape cases, the statement of the victim, even in isolation, may be sufficient to prove the charge against the accused; however, this is subject to the strict condition that such a statement must appear to be independent, unbiased, and straightforward, and must inspire confidence so as to establish the accusation against the accused. In the present case, the complainant did not utter even a single word explaining the delay in lodging the FIR. Moreover, during the medical examination of the victim, no sign of bleeding was found. Neither a DNA test nor the grouping test of the semen was conducted. In the absence of a semen grouping test, it cannot be held with certainty that the victim was subjected to zina by the accused, particularly when she was admittedly a married woman. Reliance in this

regard is placed upon the case of **Muhammad Aslam v. The State and others (2023 SCMR 397)**.

11. The Medical-Legal Report of the victim is silent with regard to penetration or the presence of any laceration on the labia majora or labia minora of the victim. Support in this regard is drawn from the case of **Irfan v. The State and another (2021 PCr.LJ Note 29)**.

12. From all the above circumstances, serious doubt is created regarding the prosecution case. The Honourable Supreme Court has held in the case of **Naveed Sattar v. The State (2024 SCMR 205)** that: *It is settled principle of law that benefit of doubt can be even extended at bail stage. Reliance is placed on Muhammad Ejaz v. The State (2022 SCMR 1271), Muhammad Arshad v. The State (2022 SCMR 1555) and Fahad Hussain v. The State (2023 SCMR 364)*.

13. Keeping in view the above circumstances, the applicant/accused (Ayaz s/o Ramzan Panhwar) is entitled to the concession of bail. Consequently, the bail application is allowed, and the applicant is admitted to bail, subject to furnishing solvent surety in the sum of Rs.100,000/- (Rupees One Lac only) along with a P.R. bond in the like amount to the satisfaction of the learned trial Court.

JUDGE

Ali.