

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Bail Appln. No. S-821 of 2025

Applicants : 1) Nawab son of Qutubuddin @ Islam, Mahar
2) Iqbal son of Menhon, Mahar
Through Mr. Shabbir Ali Bozdar, Advocate

Complainant : Muhammad Siddique s/o Anarh, Mahar
Through Mr. Anwar Ali Lohar, Advocate

The State : *Through Mansoor Ahmed Shaikh, DPG*

Date of hearing : 12.01.2026
Date of order : 22.01.2026

ORDER

KHALID HUSSAIN SHAHANI, J.- Applicants Nawab and Iqbal, seek post-arrest bail in a case bearing crime No.27/2025, for offences under sections 377 and 34 PPC, registered at Police Station Dad Laghari. Their earlier bail was declined by the court of learned Additional Sessions Judge-II (G.B/Special Court Anti-Rape) Mirpur Mathelo vide order dated August 30, 2025.

2. The prosecution case, as disclosed in FIR registered on the 22nd day of May 2025 at Police Station Dad Laghari at 2100 hours, is that on 20th April, 2025 at 1500 hours, the complainant Muhammad Siddique Mahar's minor son Abdul Razzaque, aged about 13/14 years, was grazing cattle when the complainant, along with his maternal cousin Imtiaz Ahmed and one Khandoo, heard noise emanating from the sugarcane crop on the eastern side of their property. Upon rushing to the location, they allegedly found the victim Abdul Razzaque with his hands and legs tied and his *shalwar* removed. The applicants, were also allegedly present at the scene with their *shalwars* removed. Upon seeing the complainant party, the accused reportedly wore their *shalwars* and fled. The victim then allegedly disclosed that the accused had repeatedly committed unnatural offense with him

forcibly. The complainant stated that the victim became unconscious and was taken for medical treatment to Sheikh Zayed Hospital at Rahim Yar Khan in Punjab, where he remained unconscious and underwent three major surgical operations. After returning from Rahim Yar Khan about one month later, the complainant obtained a letter from the police station to conduct DNA testing and medical examination at District Headquarters Hospital Mirpur Mathelo, whereupon the FIR was registered *inter alia* on the above facts.

3. The learned counsel for the applicants has submitted that the applicants are innocent persons who have been falsely implicated in this case on account of matrimonial disputes between the families. He contends that there is an inordinate and unexplained delay of one month and two days in the registration of the FIR, notwithstanding that the alleged place of incident was merely ten to eleven kilometers from the Police Station. The learned counsel submits that the explanation offered by the complainant that the victim was hospitalized at Rahim Yar Khan, is insufficient to account for the entire delay, as there was nothing preventing the complainant or other family members from lodging the report during the victim's hospitalization. He further argues that the medical examination of the victim was also conducted on 22nd May 2025, a full thirty-two days after the alleged incident, rendering the medical findings highly unreliable as to causation and timing. The learned counsel places particular emphasis on the forensic evidence in this case. He submits that the Chemical Examiner's Report dated 14th July, 2025 categorically states that human semen was not detected in either the external or internal anal cotton swabs collected from the victim, and that the blood sample tested negative for benzodiazepine group substances. More significantly, the DNA Test Report dated 3rd July, 2025 from the Forensic Molecular Biology Laboratory at Liaquat University of Medical and Health Sciences Jamshoro concluded that no male DNA profile, semen stains, or

sperm fractions were found on the victim's anal swabs or clothing, and that the DNA profiles of both accused did not match with any biological material from the victim. The learned counsel submits that these categorical negative forensic findings create an irreconcilable contradiction with the medical opinion that sodomy was performed, and this contradiction cannot be resolved at the bail stage but requires full trial examination. He further contends that the applicant Nawab has produced a school certificate showing his date of birth as 2nd July 2010, establishing that he is a minor aged about 15 years, which is a relevant consideration for bail. The learned counsel submits that all prosecution witnesses are close relatives of the complainant and are therefore interested witnesses requiring independent corroboration, which is absent in this case. He argues that the challan has been submitted and the applicants are no longer required for purposes of investigation. In support of his submissions, the learned counsel has relied upon case law reported as (2016 SCMR 1399), (2016 SCMR 1523), (2021 MLD 1332), (2022 YLR Note Sindh 132), (2024 YLR 1529), and (2022 YLR Sindh 132).

4. On the other hand, the learned Deputy Prosecutor General for the State, assisted by the learned counsel for the complainant, has vehemently opposed the grant of bail. He submits that both applicants are specifically nominated in the FIR with clear roles in the commission of the offense of sodomy with a minor child. He argues that the medical officer at District Headquarters Hospital Mirpur Mathelo has consistently opined that the act of sodomy was performed, and this medical opinion has been maintained even after receiving the chemical and DNA reports. He further submits that a Special Medical Board constituted by the Director General Health Services Sindh examined the case and confirmed that the victim suffered assault causing rectal perforation requiring laparotomy, sigmoid colostomy, and repair of perforation, and classified the injury as Jurh Jaifah, which is a

grievous hurt. The learned counsel for the State submits that all prosecution witnesses have supported the version of the complainant in their statements recorded under Section 161 of the Criminal Procedure Code, and more importantly, the victim Abdul Razzaque himself recorded a statement under Section 164 of the Criminal Procedure Code before the learned Judicial Magistrate on 28th August 2025, in which he implicated both applicants in the commission of the offense. The learned DPG argues that the delay in registration of the FIR has been satisfactorily explained by the complainant, who stated that the victim was in critical medical condition and required urgent treatment at Rahim Yar Khan, where he underwent multiple surgical operations and remained unconscious for an extended period. He submits that the offense of sodomy with a minor child is a heinous crime against society and falls within the prohibitory clause of Section 497 Cr.P.C as it is punishable with imprisonment for life. He further contends that the applicants have failed to demonstrate any enmity or ill will on the part of the complainant or police. The learned counsel for the complainant has submitted photographs of the victim and a certified true copy of an order whereby the pre-arrest bail of co-accused Nawab was recalled by the learned Additional Sessions Judge Daharki vide order dated 18th June, 2025. The learned counsel submits that the applicants failed to produce a Family Registration Certificate to prove the claim of minority, and a mere school certificate is insufficient. He argues that on a tentative assessment of the record, the applicants are found to be prima facie involved in the commission of the alleged offense, and therefore they are not entitled to bail. In the last, they prayed for dismissal of the bail application.

5. Arguments heard and record perused. The Court has given careful consideration to the submissions advanced by the learned counsel for the applicants and the learned Deputy Prosecutor General assisted by the

learned counsel for the complainant, and has examined the material available on record including the First Information Report, the recovery memo, the medical certificates, the Chemical Examiner's Report, the DNA Test Report, the Special Medical Board opinion, the statements of witnesses recorded under Section 161 of the Criminal Procedure Code, the victim's statement under Section 164 of the Criminal Procedure Code, and the challan.

6. The *first* and most significant consideration in this case is the stark contradiction between the medical opinion and the forensic scientific evidence. The medical certificates, including the provisional certificate dated 23rd May 2025, the final certificate dated 24th July 2025, and the Special Medical Board opinion dated 19th November 2025, all maintain that the act of sodomy was performed. The doctors have based this opinion on clinical examination showing anal tears, swelling in the anal canal, painful and swollen anal ring, and evidence that the victim underwent laparotomy, sigmoid colostomy, and repair of rectal perforation at Sheikh Zayed Hospital Rahim Yar Khan. However, the Chemical Examiner's Report dated 14th July, 2025 categorically states that human semen was not detected in either the external or internal anal cotton swabs collected from the victim, or the blood sample tested negative for benzodiazepine group substances. More significantly, the DNA Test Report dated 3rd July, 2025 from the Forensic Molecular Biology Laboratory at Liaquat University of Medical and Health Sciences Jamshoro, which employed internationally recognized methodologies including Organic Extraction Procedures, Polymerase Chain Reaction using Investigator 24 Plex Kit, and analysis on genetic analyzer, concluded unequivocally that no male DNA profile, semen stains, or sperm fractions were found on the victim's anal swabs or clothing, and that the DNA profiles obtained from blood samples of both accused did not match with any biological material from the victim. The report further states that no exogenic

tissue or epithelial remains were found under the victim's nails or under the nails of the accused persons. This is not a case of inconclusive or degraded DNA samples; rather, it is an affirmative finding that no forensic link whatsoever exists between the accused and the alleged sexual assault. Modern criminal jurisprudence has increasingly recognized DNA evidence as a critical tool for establishing or negating criminal culpability, particularly in sexual offense cases. When forensic scientific evidence of this nature categorically contradicts other elements of the prosecution case, courts must carefully scrutinize whether reasonable grounds exist to believe the accused committed the offense, or whether the matter requires further inquiry under Section 497 subsection 2 of the Criminal Procedure Code.

7. The *second* significant consideration is the inordinate delay in the registration of the FIR. The alleged incident occurred on 20th April, 2025 at 1500 hours, but the FIR was lodged on 22nd May, 2025 at 2100 hours, constituting a delay of thirty-two days. The alleged place of occurrence was merely 10 to 11 kilometers from Police Station Dad Laghari, and there is nothing on record to suggest that the police station was inaccessible or that there were extraordinary circumstances preventing the lodging of the report. The explanation offered by the complainant is that the victim was in critical medical condition and was taken to Sheikh Zayed Hospital at Rahim Yar Khan where he underwent multiple surgical operations and remained unconscious. While this explanation may account for some delay in reporting, it does not satisfactorily explain the entire thirty-two day period. Sexual assault cases, particularly those involving minor children, are ordinarily reported immediately or within hours of the incident, as they involve serious crimes requiring urgent medical examination for evidence preservation and urgent police action for apprehension of culprits. Even if the victim required hospitalization and medical treatment, there was nothing

preventing the complainant or other family members from lodging the FIR during the victim's treatment. The Supreme Court of Pakistan has repeatedly held that inordinate delays in registration of FIR, especially when inadequately explained, create a reasonable apprehension of fabrication, embellishment, and consultation among interested parties. More critically, the medical examination of the victim was also conducted on 22nd May 2025, precisely thirty-two days after the alleged incident. Medical evidence in sexual assault cases is most reliable when collected immediately or within seventy-two hours of the incident, as biological materials degrade rapidly and injuries heal or change character over time. After one month, medical findings regarding sodomy become highly unreliable as to causation, timing, and the identity of perpetrators. The Special Medical Board itself noted that the victim was identified by the concerned doctor after one month of the alleged incident. The presence of injuries such as rectal perforation observed one month later cannot definitively establish when, how, or by whom such injuries were caused, particularly in the absence of any corroborating forensic evidence.

8. The *third* consideration is the evidentiary standard under Section 497 subsection 2 of the Criminal Procedure Code, which provides that if it appears to the Court at any stage that there are not reasonable grounds for believing that the accused has committed a non-bailable offense, but that there are sufficient grounds for further inquiry into his guilt, the accused shall be released on bail pending such inquiry. This provision mandates bail when, despite the absence of reasonable grounds to believe guilt, sufficient grounds exist for further inquiry. The test is not synonymous with acquittal; rather, it recognizes that at the bail stage, courts make only a tentative assessment and deeper appreciation of evidence is reserved for trial. The present case is a paradigm illustration of a matter requiring further inquiry. There exists an

irreconcilable conflict between medical opinion on one hand and forensic scientific evidence on the other. The doctors opine that sodomy was performed based on clinical examination of injuries, but the Chemical Examiner finds no semen and the DNA laboratory finds no biological link to the accused. These are not minor discrepancies but fundamental contradictions that go to the heart of the prosecution case. The question of how sodomy could have been performed without leaving any forensic trace whatsoever, the question of when and how the documented injuries were caused, the question of whether alternative explanations exist for the rectal perforation requiring surgical intervention, and the question of whether the delay in reporting and medical examination has compromised the reliability of evidence, are all matters requiring full trial examination and cannot be conclusively determined at the bail stage through summary assessment. The Supreme Court of Pakistan has established comprehensive criteria for determining cases requiring further inquiry under Section 497 subsection 2, including material contradictions in evidence, conflicts between different types of evidence such as ocular versus medical versus forensic, procedural irregularities, and evidentiary gaps. The present case satisfies multiple such criteria.

9. The *fourth* consideration is the nature of the evidence against the applicants. The prosecution case rests primarily on three pillars, namely the eyewitness account of the complainant and two relatives who allegedly saw the accused at the scene with shalwars removed, the medical opinion that sodomy was performed, and the victim's statement recorded under Section 164 of the Criminal Procedure Code. However, each of these pillars suffers from significant weaknesses when examined critically. The eyewitnesses are all close relatives or closely connected persons, making them interested witnesses whose testimony ordinarily requires independent corroboration. In

the present case, there are no independent public witnesses despite the incident allegedly occurring in a sugarcane field during daytime at 1500 hours. More significantly, the eyewitness account is not corroborated but rather contradicted by the forensic evidence, as the DNA report shows no biological connection between the accused and the victim. The medical opinion, while consistently maintained, cannot override objective forensic science, as discussed earlier. The victim's statement under Section 164 was recorded on 28th August 2025, four months and eight days after the alleged incident and more than three months after the FIR was lodged.

10. The *fifth* consideration is the argument regarding the prohibitory clause. The learned trial court held that the offense under Section 377 of the Pakistan Penal Code falls within the prohibitory clause of Section 497 subsection 1 of the Criminal Procedure Code, as it is punishable with imprisonment for life. While it is correct that Section 377 prescribes life imprisonment as the maximum punishment, the prohibitory clause does not operate as an automatic bar to bail. The prohibitory clause in Section 497 subsection 1 provides that a person accused of an offense punishable with death or imprisonment for life shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of such offense. The operative words are "*if there appear reasonable grounds for believing.*" Therefore, even in prohibitory clause cases, if there are insufficient reasonable grounds to believe the accused is guilty, or if the case requires further inquiry, bail should be granted. In the present case, the reasonable grounds for believing the applicants are guilty are fundamentally undermined by the categorical negative DNA report showing no biological link to the accused, the negative chemical examiner report showing no semen detected, the one-month delay in FIR and medical examination, and the absence of any forensic corroboration. When forensic evidence categorically negates the

prosecution's scientific case, the reasonable grounds for believing standard cannot be satisfied merely on the basis of interested eyewitness testimony and medical opinion unsupported by science.

11. The *sixth* consideration is the claim of minority in respect of applicant Nawab. A school certificate from New Foundation Public High School Village Adam Mahar has been produced showing the date of birth of Nawab as 2nd July 2010, which would make him about 15 years old at the time of the alleged incident and at present. While the learned trial court rejected this evidence on the ground that no Family Registration Certificate was produced; however, courts have consistently recognized school certificates and similar documents as *prima facie* evidence of age even in the absence of Family Registration Certificates. If Nawab is indeed a minor as the school certificate suggests, his continued detention raises serious juvenile justice concerns, as Pakistan is a signatory to the United Nations Convention on the Rights of the Child and domestic law mandates special treatment for juvenile offenders. Bail for juveniles is the rule and not the exception. Even if Iqbal's age remains unverified, the principle of consistency in bail matters suggests that if one accused has a credible claim of minority and both are similarly situated, bail considerations should apply equally.

12. The *seventh* consideration is that the investigation in this case has been completed and challan has been submitted before the competent court. The applicants are no longer required for purposes of investigation. Once investigation is complete and challan submitted, the primary justification for custodial detention, namely facilitating investigation, ceases to exist. The Supreme Court of Pakistan has held that post-challan, the considerations for bail shift and courts should be more liberal in granting bail unless there are compelling reasons to believe the accused will abscond, tamper with evidence, or threaten witnesses. In the present case, no such apprehensions

have been demonstrated by the prosecution. Both applicants are residents of Village Allah Dino Mahar in Taluka Daharki with roots in the local community, and there is no evidence of prior criminal history or of any conduct suggesting they would abscond or interfere with the course of justice.

13. It is a well-established principle of criminal jurisprudence that bail is the rule and detention in custody is the exception. This principle applies even in serious cases and certainly applies in cases where the offense, though serious, does not fall conclusively within the prohibitory clause or where the evidence is contradictory and requires full trial examination. Section 497 subsection 2 of the Criminal Procedure Code specifically provides that when there are sufficient grounds for further inquiry into the guilt of the accused, bail shall be granted pending such inquiry.

14. For the reasons discussed above, this Court is of the considered view that the applicants have established sufficient grounds for further inquiry into the question of their involvement in the alleged offense. Accordingly, they are admitted to bail in sum of Rs.500,000/- (Five Hundred Thousand) each, and PR bond in the like amount to the satisfaction of learned trial court. The observation made above are tentative in nature and shall not affect the case of either party a trial.

J U D G E