

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Bail Application No.S-205 of 2025

Applicants:	1.Shan Ali. 2.Tharoo Khan, both sons of Muhammad Azam Jakhrani, <i>through</i> M/s. Abdul Rehman A. Bhutto and Zubair Ahmed Abro, Advocates.
Complainant:	Mst. Shahida Khatoon, <i>through</i> Mr. Muhammad Afzal Jagirani, Advocate.
The State:	<i>through</i> Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh alongwith SIP Ali Hassan, Investigation Officer of the case.
Date of Hearing:	29-01-2026
Date of Order:	29-01-2026

ORDER

Ali Haider 'Ada', J.:- Through this bail application, the applicants seek post-arrest bail in Crime No.258 of 2024, registered at Police Station Saddar, Jacobabad, for offences punishable under Sections 375-A, 449, 506/2, and 34 PPC. Earlier, the applicants had approached the learned trial Court; however, their bail plea was declined by the learned Additional Sessions Judge-I, Jacobabad, vide order dated 14.03.2023.

2. Briefly, the prosecution's case is that on 04.11.2024, the alleged victim, namely Mst. Shahida Khatoon was present at her house when the accused persons, namely Wajid Ali, Shan Ali (applicant), and Tharoo Khan (applicant), allegedly trespassed into her house. It is alleged that two of the accused, at gunpoint, committed zina with the victim. Upon hearing hue and cry, the husband and brother-in-law of the victim arrived at the spot; however, due to fear of the weapons, they remained silent. Subsequently, the victim was taken to the

hospital for medical examination. Thereafter, the F.I.R. was lodged on 05.11.2024, an investigation was carried out, and a challan was submitted under the aforementioned sections of law.

3. Learned counsel for the applicants contends that there is an unexplained delay of one day in the registration of the F.I.R. It is further argued that the medical evidence does not support the prosecution's version, as neither any injuries nor marks of violence were observed on the body of the alleged victim. Moreover, no DNA examination was conducted. It is further submitted that the alleged victim is a married woman and, in the absence of any signs of resistance, such as swelling or violence, the allegation of rape appears to be highly doubtful. In support of his arguments, learned counsel has placed reliance upon the judgments reported as 2016 SCMR 2176 (Haibat Khan v. The State and others), 2017 SCMR 366 (Muhammad Tanvir v. The State and others), and an unreported order passed by this Court in Criminal Bail Application No.927 of 2024, decided on 15.07.2024. On these grounds, learned counsel prays for the grant of post-arrest bail to the applicants.

4. Conversely, learned counsel for the complainant submits that the alleged offence is heinous in nature and is an offence against society at large. It is argued that the prosecution has established a prima facie case against the applicants. It is further contended that although the accused claim readiness to face trial, in fact, they are deliberately avoiding the proceedings. Therefore, learned counsel prays for dismissal of the bail application.

5. Learned Deputy Prosecutor General for the State supports the impugned order, contending that a prima facie case is made out against the applicants and that the contents of the F.I.R. are duly corroborated by the statements of witnesses recorded under Section 161 Cr.P.C. However, upon confrontation, the learned Deputy Prosecutor General candidly concedes that the statement of the victim under Section 164 Cr.P.C. was not recorded. He further admits that despite the promulgation of the Anti-Rape (Investigation and

Trial) Act, 2021, the investigation was not conducted in accordance with the said Act and, instead, was carried out under the ordinary course of law.

6. Heard the arguments of learned counsel for the parties and perused the material available on record.

7. In cases involving allegations of rape, utmost care and caution is required, and in this regard, medical evidence assumes considerable importance for the tentative assessment of the prosecution's case. A perusal of the medical evidence prima facie reveals that no male semen was detected. Moreover, the reports of chemical examination and DNA profiling are still awaited. According to the prosecution's version, the alleged incident occurred on 04.11.2024, while the matter was reported on 05.11.2024. However, despite the lapse of more than one year and two months, the aforesaid reports have not been produced before the Court. Such inordinate delay reflects a clear lapse on the part of the prosecution. For such omission or inefficiency of the prosecution, the accused cannot be kept behind bars for an indefinite period, particularly when the settled principle of law is that *bail is the rule and jail is the exception*. In the present case, no plausible justification has been offered for the delayed registration of the F.I.R., particularly when the complainant herself was medically examined on the very next day of the alleged incident. Such an unexplained delay gives rise to a reasonable possibility of false implication, which, at the bail stage, tilts the scale in favour of further inquiry. Reliance is placed upon the case of *Mazhar Ali v. The State and another* (2025 SCMR 318).

8. Furthermore, Section 376 PPC is a scheduled offence under the Anti-Rape (Investigation and Trial) Act, 2021 (the "Act, 2021"). The primary purpose of the said Act is to ensure prompt and effective investigation and trial of rape and sexual abuse cases through a Special Investigation Team, the constitution of which is mandatory after the enforcement of the Act. In the present case, the statement of

the victim under Section 164 Cr.P.C. was not recorded. These omissions clearly show that the investigation was not conducted in accordance with the mandatory provisions of the Act. The procedural requirements prescribed under the Act, 2021 are not mere formalities; rather, they are essential for proper determination of facts and for achieving the very object and spirit of the legislation. It is a settled principle of law that when a statute prescribes a particular mode for doing an act, the same must be followed strictly, failing which the action loses its legal sanctity. In this regard, reliance may be placed on the judgments reported as *Zia ur Rehman v. Syed Ahmed Hussain and others* (2014 SCMR 1015) and *Secretary, Ministry of Finance, Finance Division, Government of Pakistan and others v. Muhammad Anwar* (2025 SCMR 153).

9. On such an 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. It is well-settled that in cases of rape, the statement of the victim, even if considered in isolation, may be sufficient to establish the charge against the accused. However, this principle applies only if such a statement appears to be independent, unbiased, and candid, inspiring confidence in the veracity of the allegation. In the present case, the complainant has not offered any explanation for the delay in lodging the F.I.R. Furthermore, the medical examination of the victim did not reveal any signs of bleeding. Reliance in this regard is placed upon *Muhammad Aslam v. The State and others* (2023 SCMR 397), where the Hon'ble Supreme Court emphasized the need for reliability and consistency in the statement of the victim. In the instant case, the Medical-Legal Report is silent regarding penetration or the presence of any laceration on the labia majora or labia minora of the victim. Support in this context is drawn from *Irfan v. The State and another* (2021 PCr.LJ Note 29), which held that the absence of injury or medical corroboration casts doubt on the prosecution's version at the bail stage.

11. From the foregoing circumstances, serious doubts arise regarding the prosecution's case. It is a settled principle of law that the benefit of such doubt may be extended even at the bail stage. In this regard, reliance is placed upon *Naveed Sattar v. The State* (2024 SCMR 205), where the Honourable Supreme Court held that the existence of reasonable doubt can justify grant of bail. Further support is drawn from *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), wherein the Apex Court reiterated that the principle of caution in serious offences does not preclude the court from extending the benefit of doubt at the stage of bail.

12. In view of the foregoing reasons, the applicants have made out a case for the grant of post-arrest bail. Accordingly, the instant bail application is allowed, and the applicants, Shan Ali and Tharoo Khan, both sons of Muhammad Azam Jakhrani, are admitted to post-arrest bail subject to their furnishing solvent surety in the sum of Rs.100,000/- (One Hundred Thousand Rupees Only) each, along with personal bonds in the like amount, to the satisfaction of the learned trial Court. Needless to add, the observations made herein are tentative in nature and shall not prejudice the trial or the merits of the case in any manner.

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