

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Cr. Bail Application No.S-166 of 2026

Mr. Abdul Sattar Shar, Advocate along with applicant.
Syed Sardar Ali Shah Rizvi, Additional P.G along with complainant.

Date of hearing: **13-07-2026**

Date of order: **13-07-2026**

ORDER

ZULFIQAR ALI SANGI, J.- Through the instant Criminal Bail Application, the applicant/accused, namely Muhammad son of Gulsher Jafferi, seeks the concession of Pre-arrest bail in Crime No.25 of 2026, registered at Police Station SITE Area, Sukkur, for offences punishable under Sections 376 and 511, Pakistan Penal Code, 1860, after his bail application was declined by the learned trial Court vide order dated 12.02.2026.

2. Briefly stated, the prosecution case, as set out in the First Information Report lodged by the complainant Qurban Ali Shah on 29.01.2026, is that on the day of the incident he, along with his minor daughter Aleeza, aged about thirteen years, and his sons Zulfiqar Ali Shah and Amjad Hussain Shah, had gone to purchase household ration. At about 6:30 p.m., when they reached near the closed house of one Mukhtiar Ali Wadhyo, they allegedly heard cries emanating from inside the premises. Upon entering the house after opening the door, they allegedly found the present applicant standing therein. The complainant's minor daughter immediately raised alarm and disclosed that the applicant had attempted to commit zina/rape with her by using criminal force. Upon the arrival of the complainant and her companions, the applicant allegedly fled from the scene by scaling the boundary wall. Consequently, the complainant lodged the instant FIR alleging that the applicant had attempted to commit rape upon his minor daughter.

3. Learned counsel for the applicant contended that the applicant is a juvenile and relied upon a birth certificate, according to which his date of birth is 04.05.2014, asserting that he is approximately twelve years of

age. It was argued that in terms of Section 6(3) of the Juvenile Justice System Act, 2018, where a juvenile is arrested or detained in connection with the commission of a minor or major offence, he is to be treated as an accused of a bailable offence and is entitled to be released on bail. Learned counsel further submitted that the FIR was lodged after an unexplained delay of approximately two hours, thereby rendering the prosecution story doubtful. It was also argued that the applicant himself is a minor and, therefore, the allegation that he attempted to commit rape upon the complainant's minor daughter is inherently improbable and physically implausible. Learned counsel further submitted that the complainant had subsequently filed an affidavit before the learned trial Court retracting the allegations contained in the FIR, which, according to him, materially weakens the prosecution case. He, therefore, prayed for confirmation of the interim pre-arrest bail earlier granted to the applicant by this Court.

4. Conversely, learned Additional Prosecutor General vehemently opposed the application and submitted that the applicant has been specifically nominated in the FIR and is accused of attempting to commit rape upon a minor girl. It was argued that the allegations disclose the commission of an offence of an extremely grave nature, attracting severe penal consequences. Learned Law Officer further contended that the genuineness and authenticity of the photocopy of the birth certificate relied upon by the applicant have been seriously disputed by the prosecution as well as the complainant and, therefore, the plea of juvenility cannot be accepted at this tentative stage. It was further submitted that the subsequent affidavit allegedly executed by the complainant retracting the allegations cannot obliterate the prosecution case, particularly when such retraction itself is liable to judicial scrutiny and, if found to be false, may expose the deponent to criminal liability under Section 22 of the Anti-Rape (Investigation and Trial) Act, 2021, besides attracting the provisions of Sections 182 and 213, Pakistan Penal Code. Lastly, learned Additional Prosecutor General prayed for dismissal of the bail application and recall of the interim protective order.

5. I have heard learned counsel for the parties at considerable length and have carefully examined the material available on record.

6. A tentative assessment of the material placed before this Court reveals that the applicant stands specifically nominated in the FIR with the allegation that he attempted to commit rape upon the complainant's minor daughter. The allegations contained in the FIR, when examined in conjunction with the material collected during investigation, *prima facie* furnish reasonable grounds to believe that the applicant is connected with the commission of the alleged offence. Offences involving sexual assault or attempted sexual assault upon children constitute crimes of exceptional gravity, offending not only the bodily integrity of the victim but also the collective conscience of society. Such offences, by their very nature, require the Courts to exercise utmost caution while considering a request for bail.

7. Equally devoid of merit is the contention advanced on behalf of the applicant regarding his alleged juvenility. Although reliance has been placed upon a photocopy of a birth certificate reflecting his date of birth as 04.05.2014, the authenticity and evidentiary value of the said document have been seriously disputed by the prosecution. The determination of the applicant's true age necessarily involves appreciation of evidence, examination of relevant documentary record and, if required, medical opinion, all of which fall exclusively within the province of the learned trial Court. At the present tentative stage, this Court cannot conclusively determine the applicant's age merely on the basis of a disputed photocopy of a birth certificate.

8. It is further significant to observe that the Juvenile Justice System Act, 2018 classifies offences into distinct categories, namely minor offences, major offences and heinous offences. Section 2(o) defines a "minor offence" as an offence punishable with imprisonment extending up to three years, whereas Section 2(m) defines a "major offence" as an offence punishable with imprisonment exceeding three years but not exceeding seven years. More importantly, Section 2(g) separately defines a "heinous offence", which is governed by a distinct statutory framework. Consequently, the mere assertion of juvenility does not, by itself, confer an indefeasible right to bail where the allegations *prima facie* disclose the commission of a heinous offence carrying severe punishment. The protection contemplated under Section 6(3) of the Juvenile Justice System Act is, therefore, not of universal application and cannot be

extended mechanically without first determining whether the accused qualifies as a juvenile and whether the offence falls within the categories contemplated by the statute.

9. The submission regarding the alleged delay of approximately two hours in the registration of the FIR also carries no substantial force at this tentative stage. The alleged delay is neither inordinate nor of such magnitude as to adversely affect the credibility of the prosecution case, particularly where the allegations relate to an offence involving the sexual assault of a minor girl. It is well settled that in cases of this nature, some delay in approaching the police is not uncommon, as the family of the victim often remains under severe mental trauma, social stigma and emotional distress before initiating criminal proceedings.

10. Likewise, the subsequent affidavit allegedly executed by the complainant retracting the allegations contained in the FIR does not, at this stage, create any dent in the prosecution case. Such retraction is itself subject to judicial scrutiny during trial. Significantly, the complainant, who is present before this Court, categorically denied having entered into any compromise or settlement with the applicant and reaffirmed that no reconciliation had taken place between the parties. Furthermore, if the alleged affidavit is ultimately found to be false or fabricated, the maker thereof may incur criminal liability under Section 22 of the Anti-Rape (Investigation and Trial) Act, 2021, besides attracting the penal consequences envisaged under Sections 182 and 213, Pakistan Penal Code.

11. It is by now a settled proposition of criminal jurisprudence that where an offence squarely falls within the prohibitory clause of Section 497(1), Cr.P.C., the concession of bail is not to be extended as a matter of course unless the Court arrives at a tentative conclusion that there exist no reasonable grounds for believing that the accused has committed the alleged offence or that the case falls within the ambit of further inquiry as contemplated under Section 497(2), Cr.P.C. The legislative policy underlying the enhanced punishments prescribed for offences involving sexual abuse and exploitation of children unmistakably reflects the intention of the Legislature that persons accused of such grave offences should not ordinarily be enlarged on bail pending trial unless exceptional

circumstances are demonstrated. While adjudicating a bail application, the Court is under a legal obligation to maintain an appropriate balance between the fundamental right to personal liberty guaranteed to an accused and the equally compelling societal interest in protecting vulnerable victims, preserving public confidence in the criminal justice system and ensuring the fair administration of justice.

12. In the present case, the allegations contained in the FIR, supported by the material collected during investigation, prima facie furnish sufficient grounds to connect the applicant with the commission of the alleged offence. At this tentative stage, no circumstance has been brought on record which may justify bringing the case within the purview of further inquiry under Section 497(2), Cr.P.C. The gravity of the accusation, the nature of the offence, the status of the victim as a minor child and the material presently available on record collectively persuade this Court that the applicant has failed to make out a case warranting the extraordinary concession of bail. Consequently, the interim pre-arrest bail earlier granted to the applicant by this Court vide order dated 23.02.2026 is hereby recalled, and the instant Criminal Bail Application is dismissed.

13. At this stage, learned Additional Prosecutor General submitted that since the investigation has been concluded and the challan has already been submitted before the competent Court, the applicant may be taken into custody and remanded to judicial custody for the purpose of facing trial. The request appears to be well-founded and is accordingly accepted. The applicant, who is present before this Court, is taken into custody forthwith and remanded to judicial custody with the direction that he shall be produced before the learned trial Court on each and every date fixed for the proceedings unless exempted in accordance with law.

14. It is clarified that the observations made hereinabove are purely tentative in nature, confined exclusively to the determination of the present bail application, and shall not prejudice or influence the learned trial Court while deciding the case on its own merits after recording the evidence.

JUDGE