THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Present:
Justice Jawad Akbar Sarwana

Cr. Misc. Application No.S- 403 of 2026

Applicant/Complainant	:	Mst.Rukhsana w/o Turab Ali Memon, through Mr. Abdul Majeed Magsi, Advocate
Respondent No.1	:	Mubashair Ahmed Awan s/o Muneer Ahmed Awan. **Nemo**.
Respondent No.2	:	SHO PS B-Section, Tando Muhammad Khan
Respondent No.3	:	SIP Ali Khan Noonani, B-Section Tando Muhammad Khan
Respondent No.4	:	The State, through Ms. Sana Memon Assistant A.G, Sindh a/w SIP Ali Khan Noonari.
Date of Hearing	:	11.09.2026
Date of Short Order		11.09.2026
Date of Reasons	:	10.11.2026

O R D E R

JAWAD AKBAR SARWANA, J: Applicant/complainant-Mst. Rukhsana W/o Turab Ali Memon is aggrieved by the Order dated 23.06.2026 **["impugned Order"]** passed by the learned Ist Additional District Judge, Tando Muhammad Khan **["the trial Court"]** whereby Crl. B. A. No.395/2026 filed by the respondent No.1/accused [Mubashair Ahmed Awan] was allowed vide order dated 23.06.2026, and the interim pre-arrest bail order dated 25.05.2026 was confirmed.

2. I have heard the learned counsel for the applicant/complainant and the learned APG Sindh and have perused the record, and my observations are as herein below.

3. The background of the matter is set out in the FIR, which, for the sake of brevity, is not reproduced and may be read into this paragraph ad seriatim.

4. The record shows that at the time the trial Court considered the pre-arrest bail of respondent No.1/accused [Mubashir Ahmed Awan], the Court had found a contradiction between the applicant/complainant-Mst. Rukhsana's statement recorded by the police as per the FIR and the victim abductee's,

applicant/complainant's daughter, Miss Tara's statement under Section 164 Cr.P.C. Further, there was a delay of three (03) days in filing the FIR, which the trial Court also considered while deciding whether to grant concession of pre-arrest bail to the accused.

5. On 11.09.2026, the I.O. also placed on record copies of the Final MLC and DNA report of the abductee, Miss Tara. According to the Final MLC dated 29.08.2026, the woman Medical Officer has opined that, "That there is nothing to suggest that any recent penetration has occurred". However, the Final MLC has also recorded that the Provisional MLC, at the material time, recorded certain physical injuries to Ms Tara; however, no further information is available on record, which aspect also calls for further inquiry.

6. Turning to the DNA Report dated 08.06.2026, it appears from the results that DNA report that the Profile/Semen Stains/Sperm Fraction were found from neither the vaginal swab, samples of the abductee nor the parcels of clothes of the said abductee, Miss Tara. Yet, the DNA report acknowledges that the absence of the semen stains/sperm fraction do not preclude the possibility of use of condoms and non-ejaculation and the considerable delay in the medical examination and improper preservation of clothes of victim may also play a part. Indeed, once again, this aspect too, calls for further inquiry; and, a case for concession of bail may be made out on this score, too.

7. It is an established law that once a Court of competent jurisdiction grants bail, very strong and exceptional grounds are required to recall and cancel it. It may not be out of place to mention here that although the threshold for granting pre-arrest bail differs from that of post-arrest bail, viz. there must be a tentative finding of malafide on the part of the law enforcement and/or the complainant in pre-arrest bail; yet there can be no hard and fast rule concerning concession of bail, as in all matters concerning legal determination, the same turns on the facts and circumstances of each case. The same is true in pre-arrest bail. The Supreme Court in PLD 2024 SC 1241 also positively considered the criterion of "further inquiry" as a valid consideration even at the stage of granting concession of pre-arrest bail in a crime registered under Sections 302, 324, PPC, etc. Thus, no hard and fast rule can be laid down.

8. In light of the above discussion, I have given due consideration to the contention of the learned counsel for the parties and perused the record, and

the impugned bail granting orders passed by the trial Court do not call for any interference by the High Court. Consequently, this Cr. Misc. Application, having no merits, is/was dismissed by my short order dated 11.09.2026.

9. Before parting with the case, I note that, as per the report submitted by the trial Court and vehemently argued by the counsel for the complainant, the accused has not been in attendance during the investigation. This may well be a fresh ground for cancellation of bail, which the applicant/complainant is at liberty to agitate before the trial Court, but it cannot be a ground for cancellation of bail before this Court while deciding a cr. misc. application challenging the concession of bail already allowed to the accused.

10. Needless to mention that the observations made herein are merely tentative and shall not be relied upon by the parties or by the trial Court and shall not influence the learned trial Court at the time of final decision based on merits after recording of evidence.

11. The above are the reasons for my short order dated 11.09.2026 dismissing this Cr. Misc. Application.

JUDGE

Asif