# IN THE HIGH COURT OF SINDH AT KARACHI

**Cr. Bail Application No.2589 of 2026**

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| Applicant | : | Muhammad Affan son of Siraj Muhammad<br>*Through* Mr. Shamim Alam, Advocate. |
| Respondent | : | The State<br>*Through* Mr. Muhammad Mohsin Mangi, APG. |

**Cr. Misc. Application No.400 of 2026**

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| Applicant | : | Anthony son of Keero<br>*Through* Mr. Abdul Razaque Solangi, Advocate. |
| Respondent No.1 | : | The State<br>*Through* Mr. Muhammad Mohsin Mangi, APG. |
| Respondent No.2 | : | Asfand Kaleem son of Abdul Kaleem<br>*Through* Mr. Sanaullah Soomro, Advocate. |
| Date of hearing | : | 02.11.2026 |
| Date of Order | : | 18.11.2026 |

## O R D E R

***KHALID HUSSAIN SHAHANI, J.*** **-** Applicant Muhammad Affan seeks post-arrest bail in a case bearing Crime No. 220/2025 of P.S. Malir City, Karachi for offence U/S 376, 342, 34 PPC read with Section 375 PPC, whereas complainant Anthony seeks cancellation of pre-arrest bail granted to co-accused Asfand Kaleem by the learned V Additional Sessions Judge, Malir, vide order dated 02.02.2026.

2. Briefly, the prosecution alleges that on 14.04.2025, at about 0700 hours, the complainant's daughter, Anaya, aged about 17/18 years, was intercepted near the main gate of Laila Town, Malir City, by Faizan and three accomplices, forcibly taken away in a vehicle, administered an intoxicating substance and subjected to gang rape at an undisclosed location. She allegedly returned home at about 2100 hours and narrated the occurrence to her father, who lodged on 15.04.2025. During investigation, the victim's statement under Section 164 Cr.P.C. was recorded on 29.04.2025, wherein she implicated the persons allegedly involved and attributed their respective roles.

3. Muhammad Affan was arrested on 19.04.2025 and remains in judicial custody. His earlier bail application was dismissed by the learned

Sessions Court on 23.08.2025, followed by dismissal of Criminal Bail Application No. 2227/2025 by this Court on 15.10.2025. His subsequent application was again declined on 16.07.2026, principally for want of fresh grounds and the distinguishable circumstances in which co-accused Asfand Kaleem had been granted bail. The latter's ad-interim pre-arrest bail, granted on 30.12.2025, was confirmed on 02.02.2026, primarily on account of the discrepancy between the names "Asmand" and "Asfand" and the comparatively limited role attributed to him.

4. Learned counsel for Muhammad Affan contended that the applicant was not nominated in the FIR; his subsequent implication in the victim's statement under Section 164 Cr.P.C. was delayed; the account of the guesthouse personnel does not fully correspond with the prosecution version; and, most importantly, the forensic evidence does not establish any DNA linkage between the applicant and the alleged offence. He invoked Section 497(2) Cr.P.C., the principle of consistency with co-accused Asfand Kaleem, and completion of investigation. Conversely, learned counsel for the complainant, supported by the learned APG, maintained that the victim has specifically implicated the applicant, the medical and toxicological evidence supports material aspects of her account, and the grounds now urged have substantially been considered in the earlier bail proceedings.

5. In the cancellation application, learned counsel for the complainant argued that the discrepancy in Asfand Kaleem's name was merely clerical; that his participation in the abduction attracts Section 34 PPC irrespective of his alleged role as driver; and that he had remained unavailable to the investigating agency for a considerable period. It was further alleged that, after securing bail, he threatened the complainant and prosecution witnesses, particularly on 27.04.2026. Reliance was placed upon the affidavit of witness Samsan Saleem Khokhar and the earlier protective order dated 16.05.2025. Learned counsel for Asfand Kaleem defended the impugned order as a lawful exercise of judicial discretion and disputed the allegations of intimidation and misuse of bail.

6. Learned counsels for the respective parties have been heard at length and material placed on record perused with able assistance of learned APG. The medical and scientific evidence, being common to both matters, deserves consideration at the outset. The final medico-legal opinion records detection of seminal material and considers sexual assault highly probable, while leaving identification of the perpetrators to other evidence.

The toxicological report dated 29.04.2025 detects traces of ephedrine and propoxyphene in the victim's blood sample. These findings bear upon the alleged occurrence but do not independently identify its perpetrators or establish the source and effect of the substances detected.

7. More significantly, the Sindh Forensic DNA and Serology Laboratory report dated 14.05.2025 records the presence of seminal material on the vaginal swabs, although no spermatozoa were visualized. The epithelial DNA profile matched the victim, whereas the sperm fraction yielded a mixed profile, with the major component corresponding to the victim and the partial male component remaining inconclusive. No conclusive male DNA profile linking the material with Muhammad Affan or any other particular accused was established. The report further records that no DNA analysis was conducted on the blood sample of Muhammad Ahmed. Thus, while the forensic evidence does not scientifically identify the applicant as a contributor, its inconclusive character cannot be equated with his affirmative exclusion. Equally, detection of seminal material cannot, without a reliable comparison, establish the identity of any accused. The distinction between absence of incriminating scientific linkage and positive exculpatory evidence must be maintained.

8. Turning to Muhammad Affan's bail application, the governing consideration is whether any fresh ground or material change in circumstances has arisen after the earlier rejection of bail. Successive bail applications cannot be employed to secure repeated adjudication of substantially identical grounds. In 2024 SCMR 28[1], the Supreme Court reiterated that grounds already available and considered in earlier proceedings cannot be reintroduced as fresh grounds merely by presenting them differently.

9. The forensic and toxicological reports now emphasized were issued in April and May 2025, respectively, whereas the applicant's earlier bail application was dismissed by this Court on 15.10.2025. The victim's statement under Section 164 Cr.P.C., the delay in registration of the FIR, the alleged discrepancy concerning the guesthouse personnel, and completion of investigation were likewise matters available before the earlier adjudication. Their renewed examination does not, by itself, constitute a subsequent development. The victim's judicial statement specifically implicates Muhammad Affan and attributes a role to him in the alleged occurrence. The correctness of that accusation, the effect of

[1] Muhammad Usman v. The State and another

delayed nomination and the significance of inconsistencies in the surrounding evidence are matters for trial. The absence of a conclusive DNA match, though relevant, does not automatically displace the direct accusation or establish a fresh ground for reopening a bail determination made upon the same evidentiary record.

10. The plea of consistency is equally misconceived. Asfand Kaleem's bail was granted on considerations peculiar to his case, particularly the disputed identification and the nature of his attributed participation. These circumstances were expressly distinguished by the learned Sessions Court while rejecting Muhammad Affan's subsequent bail application on 16.07.2026. Consistency presupposes substantial similarity in the roles, evidence and circumstances of the accused; it does not mandate uniform treatment merely because they are implicated in the same occurrence. Furthermore, while the applicant's detention since 19.04.2025 and completion of investigation are relevant considerations, neither circumstance, by itself, furnishes an automatic entitlement to bail in an offence falling within the prohibitory clause of Section 497(1) Cr.P.C. No sufficient material regarding the actual progress of trial and responsibility for delay has been placed before this Court to determine an independently accrued statutory ground of delay.

11. Consequently, the applicant has failed to establish any materially fresh circumstance warranting reconsideration of the earlier judicial determinations. The available record continues to disclose incriminating material requiring adjudication at trial, and the present application, substantially founded upon grounds previously available, does not merit acceptance.

12. The application for cancellation of Asfand Kaleem's bail, however, requires application of a different and more stringent standard. It is settled that cancellation of bail is not to be ordered merely because another view of the material is possible. Interference is ordinarily justified where the bail order is manifestly illegal, arbitrary or perverse, or where subsequent conduct establishes misuse of liberty, including intimidation of witnesses, interference with evidence or evasion of judicial process. Reference may be made to PLD 2022 SC 475[2].

13. The impugned order dated 02.02.2026 shows that the learned Sessions Court considered the prosecution allegations, the victim's statement, the

[2] Chairman, NAB v. Nisar Ahmed Pathan and others

objections of the State and complainant, the discrepancy between the names “Asmand” and “Asfand”, and the role attributed to the accused. The learned Court treated the question of identification and extent of participation as requiring further inquiry. Admittedly, a mere variation in the recording of a name may not be decisive where identity is otherwise established. Likewise, the attributed role of driving the vehicle cannot be regarded as inconsequential if participation in furtherance of a common criminal intention is ultimately proved. Nevertheless, these considerations involve factual questions requiring evidence. The tentative view adopted by the learned Sessions Court, even if debatable, cannot on that account alone be characterized as perverse or manifestly illegal.

14. The objection that bail was granted without hearing the complainant is also contradicted by the impugned order, which records service of notice and the submissions advanced on behalf of the complainant and prosecution. Similarly, the allegation of previous absconding requires examination of the relevant process and surrounding circumstances; the material presently available does not establish any subsequent violation of the accused’s obligation to attend Court.

15. The allegations of intimidation undoubtedly constitute the most serious aspect of the cancellation proceedings. The complainant asserts that Asfand Kaleem threatened him and witness Samsan Saleem Khokhar on 27.04.2026, and the latter has supported the accusation through an affidavit. The earlier order dated 16.05.2025 also shows that the complainant had sought protection against alleged threats. However, that order predates the confirmation of bail and does not independently establish its subsequent misuse. The allegation dated 27.04.2026, though specific and supported by an affidavit, remains disputed, and no independent judicial determination or sufficiently corroborative material establishing actual intimidation or breach of bail conditions has been demonstrated. Likewise, the allegation of other criminal antecedents has not been substantiated through an adequate authenticated record. Serious allegations cannot be disregarded, but neither can cancellation of an existing judicial concession rest upon their unverified assertion alone.

16. In these circumstances, the complainant has failed to establish either such patent infirmity in the order dated 02.02.2026 as would justify its annulment or subsequent misuse of bail sufficient to warrant recommittal of Asfand Kaleem to custody. The concession, however, remains subject to strict observance of its conditions. Any credible and established act of

intimidation, interference with prosecution witnesses, evasion of process or other abuse of liberty may furnish an independent ground for cancellation. The concerned SHO shall ensure lawful protection of the complainant, victim and prosecution witnesses, including compliance with the earlier protective directions, and shall promptly deal with any complaint of intimidation in accordance with law.

17. For the foregoing reasons, Criminal Bail Application No. 2589 of 2026 filed by Muhammad Affan is dismissed. Criminal Miscellaneous Application No. 400 of 2026 seeking cancellation of pre-arrest bail granted to Asfand Kaleem is also dismissed, subject to the observations and directions hereinabove. Considering the nature of the accusation and the period of custody already undergone by Muhammad Affan, the learned trial Court shall proceed with the trial expeditiously, avoid unnecessary adjournments and make every lawful endeavor to conclude it at the earliest.

18. All observations are tentative, confined to disposal of these applications, and shall not prejudice either party at trial, which shall be decided independently upon the evidence brought on record.

**J U D G E**