

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 24 of 2021

For hearing of bail application.

Mr. Deedar Ali M.Chohan Advocate along with Applicant/Accused.
Mr. Ameenuddin Khaskheli Advocate for Complainant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of Hearing: 22-02-2021
Date of Order: 22-02-2021

ORDER

Aftab Ahmed Gorar J. On dismissal of his Bail Application by learned Additional Sessions Judge, Moro / Gender Based Violence Court, Naushehro Feroze, vide order dated 19.12.2020, applicant / accused Shaman son of Muhammad Hayat Khaskheli has approached this Court by filing instant Crl. Bail Application under Section 498 Cr.P.C, for pre-arrest bail in case FIR No. 66 of 2020, registered at P.S, Mithiani, under Sections 452, 365-B, 376 PPC.

2. The facts of the prosecution case are that complainant Rashid Ali Khaskheli lodged FIR on 04.11.2020 at 2000 hours in respect of an incident, alleged to have taken place on 05.08.2020 at 0230 hours, alleging therein that on the eventful day, he, his wife Mst. Shahla, maternal uncle Manzoor Ali and other family members were sleeping in house, when on 05.08.2020 at 0230 hours, they woke upon the barking of dogs and saw five armed persons entered into the house; they were identified on the electricity light to be 1.Ameer with repeater, 2, Nisar Ali with pistol, 3. Ali Murad with pistol, 4.Shaman

with gun and 5 Khuda Bux with pistol. They overpowered upon the complainant party and on the show of force, accused Shaman and Ameer Ali caught hold of Mst. Shahla, dragged her along with minor son, namely, Habib Rehman, aged about one year outside the house and kidnapped away her in a Mehran Car, while accused Ali Murad boarded on motorcycle, which was parked there, while remaining accused persons went away along with abductee and minor. Thereafter, complainant party made complaints to Nekmards and approached the accused persons, but they kept them on hollow hopes. It is further alleged that after 10/11 days, Mst. Shahla contacted complainant on cell phone and disclosed that accused have kept her in a house at Sadiqabad, On such information, complainant and witnesses went to Sadiqabad and reached at pointed out place, where met with one person who disclosed his caste as Shah, but did not disclose his name and further disclosed that Mst. Shahla was delivered by accused Shaman against an amount of Rs. 2,50,000/- who is with him and thereafter complainant party paid Rs.2,50,000/- to him and taking surety for any ill act with Mst. Shahla, handed over custody of Mst. Shahla along with minor. Thereafter, complainant party along with abductee returned to house and Mst. Shahla disclosed that after kidnapping, accused kept her at Sadiqabad, where they accused Shaman Khaskheli said her for forcible Nikah and committed forcible zina upon her. Ultimately, on the orders of learned Justice of Peace/Additional Sessions Judge, Naushehro Feroze vide order dated 21.10.2020, the above FIR was lodged.

3. Learned counsel appearing on behalf of the applicant argued that the applicant is innocent and has falsely been implicated by the complainant in this case with mala fide intentions and ulterior motives so also due dispute over property; that there is inordinate delay of three months in lodgement of FIR, for which no plausible explanation has been furnished; that co-accused Ameer Ali, Nisar Ali, Ali Murad and Khuda Bux have been admitted to bail, as such under the rule of consistency, the present applicant also deserves the same concession of bail; that there is contradiction in the version recorded in the FIR so also in 164 Cr.PC statement of the alleged abductee recorded before learned Magistrate; that the ocular version of the abductee is not supported by the medical evidence; that the applicant has never misused the concession of interim pre-arrest bail granted by this Court, as he is regularly attending the trial Court. Lastly, he prayed for confirmation of interim pre-arrest bail. In support of his contentions, learned counsel relied upon cases reported as **Babar v. The State (2020 SCMR 761), Dr.Farrukh Sher Khan v. The State (2018 PCr.LJ Note 132) and unreported order dated 24.08.2020, passed by this Court on Crl.B.A.No.S-349 of 2020.**

4. On the other hand, learned counsel appearing on behalf of complainant as well as learned Deputy P.G for the State vehemently opposed the confirmation of interim pre-arrest bail, earlier granted to the applicant by this Court on the ground that the present applicant is nominated in the FIR with specific role; that the statement of alleged abductee Mst.Shahla was recorded in terms of Section 164 CrPC, wherein she has fully implicated the present applicant for committing

forcible zina upon her; that delay in FIR has plausibly been explained by the complainant; that case of co-accused, who have been admitted to bail, is entirely different to that of present applicant, as such rule of consistency does not apply to the case of present applicant; that the offence with which applicant is charged is a heinous offence, as such the present applicant deserves no leniency of bail. He prayed for dismissal of instant bail application. Learned counsel for complainant relied upon cases reported as **Zahid and another v. The State (2020 SCMR 590)** and **Farooq Ahmad v. The State (PLD 2020 SC 313)**.

5. Heard learned counsel for the parties and perused the material available on record meticulously. Undoubtedly, there is delay of about three months in lodgement of the FIR, but the same has plausibly explained by the complainant. Even otherwise, the said delay would not affect the merits of the case, as in the cases of abduction of women folk, aggrieved family at the first instance makes utmost efforts for return of abducted woman at their own accord to save their honour and respect in society. Moreover, perusal of record emanates that name of the present applicant is mentioned in the FIR and there are specific allegations of forcibly abduction of the victim on gunpoint by the present applicant along with his associates from the house of complainant. Statement of abductee Mst. Shahla was recorded in terms of Section 164 CrPC by learned Judicial Magistrate, whereby she has categorically stated that present applicant Shaman along with co-accused abducted her from her house on gun point and present applicant committed zina upon her. Such statement has been supported by the medical certificate that zina was committed upon

alleged abductee. It is well settled that mere statement of victim alone in a rape case, would be sufficient to connect the accused with the offence, if the statement of victim inspires confidence and no ulterior motive and mala fide has been spelt out from the averments of FIR supported with other iota of evidence collected by the prosecution. Apart from above, the present applicant not only committed zina upon alleged abductee, but after committing zina upon her for a considerable period at Sadiqabad, the present applicant sold out said abductee to one Shah at Sadiqabad for a consideration of Rs.2,50,000/, however, the complainant paid aforementioned amount to said Shah and got the alleged abductee released and later on, her custody was handed over to him. This allegation also appears to be serious in nature.

6. Considering the above facts and circumstances, applicant Shaman Khaskheli has failed to make out his case for grant of pre-arrest bail so also he has failed satisfy the Court with regard to condition of mala fide of his intended arrest, therefore, his case is not fit for grant of anticipatory bail. Accordingly, interim pre-arrest bail earlier granted to the **applicant Shaman Khaskheli by this Court vide order dated 11.01.2021 is recalled to his extent and his bail application stands dismissed.** He is taken into custody and remanded to Central Prison-1, Sukkur with directions to produce him before learned trial Court on each and every date of hearing. There is no cavil to the proposition laid down in the case-law relied upon by learned counsel for the applicant, but it has no relevancy to the facts and circumstances of the case in hand.

7. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where the case be decided strictly on its own merits after recording evidence.

J U D G E

Ahmad