

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.1721 of 2024

Applicant : Syed Hassan Haider S/o Syed Nafees Haider through Mr. Siraj Ahmed Mangi, Advocate

Complainant : Sakina Bibi W/o Muhammad Riaz through Mr. Aijaz Hyder Mugheri, Advocate

Respondent : The State Through Mr. Muhammad Anwar Mahar, DDPP a/w SIP Irum Amjad

Date of hearing : 17.02.2025

Date of order : 17.02.2025

### **ORDER**

**AMJAD ALI SAHITO, J** -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.248/2024 for the offence under Sections 376/511/34 PPC registered at PS Super Market, after his bail plea has been declined by the learned II-Additional Sessions Judge, Karachi Central vide order dated 03.07.2024.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant has filed a statement alongwith certain documents, taken on record. Per him, applicant is innocent and has falsely been implicated in this case; that FIR is delayed about 06 days for which no plausible explanation has been furnished by the complainant; that in fact the victim side is causing harassment to the applicant, otherwise he has no committed any offence; that the complainant party is habitual of lodging such type of FIRs against innocent people in order to grab money; that during course of investigation, the I.O. of the case disposed of the case under "C" class, as such, this case becomes the case of further enquiry. Lastly, he prays for confirmation of bail.

4. On the other hand, learned counsel for the complainant while opposing the bail states that delay has properly been explained as there is no malafide on the part of victim. In support of his contentions, he has relied upon the cases (1) Muhammad Tanvir vs. The State and others (2017 SCMR 366), (2) Zahid vs. The State (2022 SCMR 50) and Muhammad Tariq vs. The State (2021 YLR 1735). Learned DDPP also opposed for bail.

5. Heard and perused.

6. From perusal of record, it reflects that complainant lady is a tenant of applicant's party and residing within the same house, as such, applicant in the absence of mother of the victim, came in her house and committed rape with her. When such fact was disclosed by the victim to her mother, then applicant's party jointly agreed to get their Nikah performed and thereafter, Nikah was solemnized between the applicant and the victim; however, applicant party refused to proceed the Rukhsati. In fact, the marriage between them was intact for about four months and thereafter the applicant divorced him. Apparently, first time when the rape was committed by the applicant and the victim reported the matter to her mother then applicant's party agreed to solemnize Nikah only in order to save him from the punishment of rape; otherwise there is complete malafide on the part of applicant's party that they were reluctant to proceed the Rukhsati. So far as delay in FIR is concerned, such delay in reporting the matter to the police was not material in cases of sexual abuse as the victims or their families were reluctant to come forward to promptly report the crime because of trauma that had been suffered and they may have a perception of shame or dishonor in having the victim invasively examined by a doctor. Reliance is placed in the case of **Zahid vs. The State [2022 SCMR 50]**. So far as contention of learned counsel for the applicant that I.O. disposed of the case in "C" class is concerned, the opinion of police official is not binding upon the Court and the learned Magistrate has already taken the cognizance of the offence. At bail stage, only tentative assessment is to be made and deeper appreciation is not permissible. The version of the complainant is fully supported by the victim.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the

seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, learned counsel for the applicants has failed to make out a case for grant of bail in view of subsection 2 of Section 497 Cr.P.C. Resultantly, the instant bail application is **dismissed**. The interim pre-arrest bail granted to the applicants/accused vide order dated 23.12.2024 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants/accused on merits.

JUDGE

Kamran/PA