

IN THE HIGH COURT OF SINDH, KARACHI

CR. BAIL APPLICATION NO.1338 OF 2017

Applicant : Sikandar son of Muhammad Saleh
Through Syed Sultan Shah, Advocate

State : Through Mr. Zafar Ahmed Khan,
Additional Prosecutor, General.

Dates of Hearing: 13.11.2017

Date of Order : 13.11.2017

ORDER

Mohammed Karim Khan Agha, J. Through this bail application under section 498 Cr.P.C. the applicant/accused seeks confirmation of his pre arrest bail granted by this court vide order dated 28-08-2017 in FIR No. 42/2017 for an offence under section 377 PPC, PS Ibrahim Hyderi, Karachi.

2. The allegations against the applicant/accused as per contents of the FIR are that on 03.04.2017 at 1930 hours father of complainant was sitting inside the street, he heard the cries of complainant from the Sindhi School, when father of complainant and grandfather of the victim went towards the place of cries and entered into the school and saw that boy of the Mohallah Sikandar @ Sikoo son of Muhammad Saleh while running and the son of the complainant namely Sameer aged about 07 years was crying and his shalwar was down, the victim. Sameer disclosed that Sikandar has forcibly committed unnatural offence with the victim. The complainant was informed about the incident by his father on cell phone who came to his father who saw blood on his thigh and back.

3. Learned counsel for the applicant has submitted that applicant is quite innocent and has been falsely implicated in this case by the complainant with malafide intention. He further contended that complainant is hearsay witness and

the evidence is inadmissible under the eye of law and no any incident as alleged by the complainant has ever taken place. Complainant is also not an eye witness of the alleged incident hence the instant FIR becomes doubtful and requires further inquiry and as such his pre arrest bail should be confirmed.

4. On the other hand, Learned Addl.P.G. for the State has vehemently opposed the bail application on the grounds that the name of the applicant/accused is mentioned in the FIR with his specific role, therefore, the applicant/accused is not entitled for concession of bail as sufficient material is available on record ^{to} ^{by} connect him to the offense for which he has been charged and as such his pre arrest bail should be recalled.

5. I have considered the submissions of learned counsel for the applicant/accused, learned Addl. P.G for the State and the record.

6. The findings in this order are only tentative in nature and will have no bearing on the trial of the applicant which shall be decided on merit by the trial court based on the evidence on record.

7. It is pertinent to note that the pre arrest bail of the applicant was dismissed by the trial court vide order dated 24-04-2017 since there was sufficient material to connect the applicant to the offense for which he has been charged though despite this finding on merits the applicant absconded from the court.

8. For the grant of pre arrest bail it is settled law that there must be some malafide on the part of the complainant or the police. The applicant has not been able to make out a ground of malafide and as such his application for pre arrest bail deserves to be dismissed on this count alone.

9. In addition I find that the applicant has been nominated in the FIR and has been given a specific role; that the FIR has been lodged promptly; that the medical report indicates that the crime was committed; that the victim and another PW Ghulam Mustafa are eye witnesses to the offense and fully implicate the applicant; that the offense is of a serious nature perpetrated upon a minor; that taking all the above considerations into account, prima facie I find that there is sufficient material on record to connect the applicant to the offense for which he has been charged and thus his pre arrest bail stands recalled with immediate effect.

10. The trial court however is directed to complete the trial within 6 months of the date of this order and shall examine without fail on the next date of hearing, which is said to be 25th November 2017, the complainant who has been reluctant to appear before the trial Court due to threats to his life and thereafter the victim and the eyewitness Ghulam Mustafa. The trial shall not be adjourned on any flimsy ground. A copy of this order shall be transmitted by the office to the concerned trial court for compliance.

11. These are the reasons for my short order of even date which reads as under:

“For reasons to be recorded later, the pre-arrest bail granted by this Court by order dated 28.08.2017 is hereby recalled with immediate effect. The concerned trial Court is directed to complete the proceedings within six months of the date of this order.”

12. This petition stands disposed on in the above terms.