

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 167 of 2019

Abid alias Abid Raza.Applicant.

Versus.

The State..... Respondent

For Hearing of bail application.

Mr. Muhammad Qayyum Arain Advocate for the applicant.

Mr. Abdul Rehman Kolachi, Deputy P.G for the State along with complainant.

Date of hearing: 01-04-2019

Date of decision: 01-04-2019

ORDER

ZAFAR AHMED RAJPUT J., Learned counsel for the applicant files through statement copy of admission slip of the applicant along with schedule of examination and requests that absence of applicant may be condoned for today as he has gone to attempt his first paper of SSC-I. The absence of the applicant is condoned.

2. Through instant Crl. Bail Application, the applicant/accused Abid alias Abid Raza son of Piyas Ali seeks pre-arrest bail in Crime No. 30 of 2019 registered at P.S, Ranipur under Section 376(1) PPC. His earlier application for grant of pre-arrest bail bearing No. 469 of 2019 was heard and dismissed by the learned Additional Sessions Judge-IV, Khairpur vide order dated 02.03.2019. The applicant was admitted to ad-interim bail by this Court vide order dated 31.01.2019, now the matter is fixed for confirmation of the same or otherwise.

3. Briefly stated, the facts of the case are that on 21.02.2019 complainant Miss Sheeba D/o Allahyar lodged aforementioned F.I.R alleging therein that she is about 17/18 years old and she is a virgin; that on the said date, she along with her maternal aunty Mst. Abida was going for grazing and when they reached near the lands of Piyas Ali, accused (1) Abid alias Abid Raza, (2) Waqar Ali alias Waqar both sons of Piyas Ali and (3) Nawaz Ali s/o Habibullah came there and on the strength of their pistols, Abid gripped her from arm and took her to dates orchard where he took off her Shalwar and committed Zina with her, to which her aunty raised cries which attracted Bisharat Ali and other villagers whom seeing coming, the accused persons ran away.

4. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case; that applicant Abid and co-accused Waqar Ali are real brothers and paternal cousins of the complainant while co-accused Nawaz Ali is first cousin of the applicant; that complainant is on inimical terms with the accused persons over family dispute; that the applicant is a minor having age of 13-years and he is studying in the 9th class at Mehran Higher Secondary School, Ranipur; that no such incident has taken place which is evident from the fact that the medico legal report does not suggest the commission of alleged act, hence it is a fit case for further enquiry. In support of his contentions, learned counsel has relied upon the cases of *Tahir alias Biloo and another v. The State*

(2019 PCr.L.J 954) and *Sardar Bibi and another v. Munir Ahmed and others* **(2017 SCMR 344)**.

5. On the other hand, learned Deputy P.G has opposed the confirmation of ad-interim bail granted to the applicant on the grounds that the maternal aunty of the complainant is the eyewitness of the incident and the complainant has implicated the applicant in the F.I.R in categorical term by stating that he had committed Zina with her and in this regard negative report of the Chemical Examiner is of no help to the applicant. In this regard, learned DPG has placed his reliance on the case of *Shafqat Ali v. The State* **(2011 YLR 1744)**.

6. Heard learned counsel for the parties and perused the material available on record with their assistance.

7. It appears that the applicant, along with two other co-accused, is nominated in the F.I.R by name with allegation of committing Zina with the complainant on 21.02.2019 at 1500 hours. It further appears that on the very next day the complainant appeared before the MLO, who obtained three vaginal cotton swabs and sent the same for chemical analysis. As per report of Chemical Examiner, dated 04.03.2019, human semen not detected in swabs. Learned DPG while referring the case of Shafqat Ali (supra) has argued that the negative report of Chemical Examiner is of no help to the accused. I am not in agreement with him as the case of present applicant is distinguishable so far facts of Shafqat Ali's case is concerned as in the latter case, swabs were sent after lapse of about ten days of the commission of the

offence while stating in the report of the Chemical Examiner that after elapse of four days, there are less chances of detection of semen, while in the instant case on the very next day swabs were sent for chemical examination. Hence, in absence of any corroborative medical evidence to connect the applicant with the commission of alleged offence, the guilt of the applicant requires further enquiry as envisaged under sub-section (2) of Section 497, Cr.P.C, and cumulative effect of such factor (negative report of Chemical Examiner) has created an impression of mala fide implication of the applicant in the case, therefore, ad-interim bail earlier granted to the applicant vide order dated 08.03.2019 is confirmed on same terms and conditions.

8. Needless to mention here that the observations made hereinabove being tentative in nature would not influence the trial Court while deciding the case of the applicant on merits.

JUDGE