

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No. 403 of 2018.

Date

Order with signature of Judge

For hearing of bail application.

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17.05. 2018

Ms. Rehana Nazeer, Advocate for applicant.

Mr. Abrar Ali Khichi, DPG.

Mr. Ali Gohar Masroof, Advocate for complainant.

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Salahuddin Panhwar-J:- Through instant application, applicant seeks post arrest bail in Crime No. 26/2018 under Section 376, 34 PPC, registered at Police Station Mobina Town, Karachi.

2. According to the FIR, allegation against the applicant/accused is that he committed rape with complainant's daughter namely Sania.

3. Learned counsel for the applicant, *inter alia*, contends that FIR is delayed about ten days; applicant contracted marriage with Sania in 2013, thereafter, he filed suit for conjugal rights in 2014, subsequently, mother of the victim arranged marriage of Sania with Abdul Sattar, who is residing in Saudi Arab. Since this marriage was run away marriage, thus mother of Sania was not happy and bail application is appended with Marriage Registration Certificate issued by Union Council, affidavit of freewill marriage dated 03rd October 2013, copy of conjugal rights suit and affidavit of no objection filed by the complainant with regard to grant of

bail even affidavit of alleged victim which is verified by the Incharge Identification Surety Branch contending therein that they have settled their dispute *excuria* [out of the court] and have no objection if applicant is granted bail. In support of her case learned counsel has placed reliance case law reported as Muhammad Tanvir vs. The State and others [2017 SCMR 366].

4. Learned counsel for the complainant, in assistance of learned DPG, files certain documents showing therein that alleged victim is wife of Abdul Sattar and photographs of victim with applicant as well FIR No. 107 of 2014 and agreement with regard to return of money. Further he contends that suit for jactitation of marriage, filed by Sania, is pending before the Family Court, Karachi, Central. He has also submitted marriage certificate of Sania with Abdul Shakoor, issued by the concerned authority.

5. Heard and perused the record.

6. Admittedly, suit for jactitation of marriage filed by the victim Sania is pending adjudication, which confirms that there is a claim of applicant to be *husband* of victim Sania which made her (*alleged victim Sania*) to seek such declaration. Affidavits and photographs, appended with bail application, *prima facie* shows that the claim of the applicant/accused regarding a *lawful* marriage is not a mere *claim* but is backed / supported by certain documents and veracity of these documents is yet to be determined by the trial Court. Issue of two suitors could only be decided by the trial (*Family*) Court. The allegation of *abduction* or *rape* even shall entirely depend upon *proper* adjudication of such claims which, in such

like cases, would be a sufficient ground to bring it (*case*) within purview of Section 497(ii) Cr.PC. Accordingly, this is a fit case of further inquiry, hence, applicant is admitted to post arrest bail subject to furnishing solvent surety in the sum of Rs.200,000 (Two lac) and PR in the like amount to the satisfaction of the trial Court.

Needless to mention that these are tentative assessment would not prejudice the merits of the case of either party.

JUDGE

SAJID-