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IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No.01/2009

ORDER

Date of hearing : 06.01.2009

Date of announcement: .02.2009

Applicant : through Mr. Merajuddin Ansari, Advocate.

Respondent : The State through Mr. Muhammad Iqbal Kalhorro, Addl. Prosecutor General Sindh.

Syed Mahmood Alam, J:- This bail application is directed against the order dated 30.10.2008, passed by learned IIIrd Additional Sessions Judge, Karachi (West) in Sessions Case No.578/2008, under section 376 P.W.A, registered at P.S. Surjani Town Karachi, whereby the bail application of the applicant was dismissed.

Precisely, the facts of the prosecution case has depicted in the F.I.R., that one Mst. Mumtaz wife of Sadique lodged F.I.R. on 12.8.2008 at 1600 hours and stating therein that on the same day she was alone in the house, in the meanwhile, the accused/applicant entered into the house and forcibly committed Zina with her, on hue and cries, her elder brother and mother-in-law came there and tried to catch the applicant, but he made his escape good, after taking Shalwar, on such report a case under section 376 Women Protection Act was registered at P.S. Surjani Town.

That later on the accused/applicant was arrested on 14.8.2008, and after investigation

challan was submitted.

The learned counsel for the applicant has contended that actually no such incident was occurred and the F.I.R. is false and fabricated and has been registered due to family disputes, as the marriages of both the families are on the Watta Satta system. He has further contended that Mr. Mukhtar Ehsan, advocate, who appeared for the applicant, but actually complainant and his family members engaged the said advocate who has not brought the actual facts before the learned trial Court. The accused/applicant is in custody while the matter required further inquiry as there are so may witnesses in the case and the proceedings would take long time.

Learned Addl. Prosecutor General, opposed the grant of bail but has accepted that both the parties belonged to same family and both the counsel have perused the record. No doubt, the name of the applicant appears in the F.I.R. that the direct role of commission of Zina with the complainant being a married woman having two children supported by medical evidence and the statement under section 154 Cr.P.C. of the complainant as well as other witnesses, which persuaded the learned trial Court to reject the bail application of the applicant, but the complainant alleged in the F.I.R. that the applicant was drunk and she scared, therefore, put off her clothes and after the commission of incident she made hue and cries. The accused/applicant was empty handed, area is thickly populated and Katchi Abadi, no sign or attempt has appeared from the complainant side to save her skin instead she compromised with the accused, when her elder brother and mother-in-law came into room, therefore, accused had left her and after taking Shalwar made his escape good. If we believe this story then it is practically impossible that in such thickly populated area, the accused/applicant or the complainant were doing such act in the day time while doors were remained open, so this story is also appears to be false and if we believe the story of the complainant that due to hue and cries her elder brother and mother-in-law came into the room and further no mohalla people had attracted. The applicant was said to have drunk, even then after taking Shalwar, he made his escape good and the elder brother could not catch him though area was thickly populated, there would have been no room to run away,

therefore, this story also requires further inquiry.

In such circumstances, the contention of the learned counsel appears convincing as due to family disputes the said F.I.R. was registered.

At this state, medical evidence has no relevancy as the complainant is a married woman and she herself made no resistance. Any how, the deeper appreciation would affect the case of either party and after tentative assessment of the case, matter requires further inquiry.

The applicant has made a case of bail, therefore, bail is granted to applicant subject to furnishing solvent surety in the sum of Rs.1,00,000/= with P.R. Bond in the like amount to the satisfaction of the trial Court.

These are the reasons of the short order passed on 06.01.2009.

Judge

RZK

Abdul Razzak Jakhro