

## **IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No.1177 of 2018  
Criminal Bail Application No.1557 of 2018

**Present:**

**Mr. Justice Amjad Ali Sahito**

Applicant in Crl. Bail : Shah Zaman S/o Meer Zaman  
Application No.1177/2018 through Sardar Salman Ishaq,  
Advocate

Applicant in Crl. Bail : Zafar Aman S/o Habib Ullah Khan  
Application No.1557/2018 through Mr. Naseer Khokhar, Advocate

Respondent : The State  
through Ms. Rahat Ahsan,  
Addl. Prosecutor General Sindh.

Date of Hearing : 15.07.2019

Date of Order : 15.07.2019

### **ORDER**

**AMJAD ALI SAHITO, J :-** Through these bail applications, applicants/accused above named seek confirmation of bail in Crime No.216/2017 for the offence under sections 376/337-A(i)/34 PPC registered at PS North Nazimabad.

2. The facts of the case are already mentioned on the face of the bail application, hence no need to reproduce the same hereunder.

3. Learned counsel for the applicants mainly contended that the applicants are innocent and have falsely been implicated in this case; that there is a delay of about 11 days in lodgment of the FIR for which no plausible explanation has been given by the complainant; that nothing has been brought on record from the possession of the applicants/accused; that medical sample was taken by the complainant but no DNA was conducted to believe that the applicants have committed forcefully intercourse with the complainant; that the place of incident was thickly populated area but not a single independent person has been produced by the complainant to support her contentions; that the other shopkeepers/owner of the showroom have not supported the version

of the complainant to believe that any sexual attempt was done by the applicants; that the complainant has filed an affidavit before the learned trial Court for compromise; that the complainant in order to save her from the payment of the alleged Car being No.ADC-874 has cooked the whole story with malafide intentions and ulterior motives. They lastly prayed for confirmation of bail to the applicants.

4. Learned Addl. PG vehemently opposed for confirmation of bail on the ground that witnesses have supported the version of the complainant.

5. I have heard the learned counsel for the parties and perused the material available on record. It is an admitted position that there is a delay of 11 days in the lodgment of the FIR for which no plausible explanation was given by the complainant to believe that allegedly any sexual attempt was done by the applicants. Complainant/victim was produced before the medical officer for medical examination and as per the medical report, there were no marks of violence on her body parts at the time of examination, hence this fact does not support the version of FIR as in the FIR she was tortured by the applicants/accused. Although the offence is heinous and falls within the prohibitory clause of Section 497, Cr.P.C. yet mere heinousness of offence is no ground to refuse the bail, if otherwise they are entitled for the grant of the same. Reliance is placed upon case-law reported in 2011 SCMR 710 (Nasir Khan v. Waseel Gul and another) where the Apex Court was pleased to hold as follows:-

***“No doubt, it is true that respondent is one of the accused persons charged in a heinous offence but it is equally true that mere heinousness of an offence does not disqualify an accused person from the relief of bail, if otherwise his case is found fit for grant of bail.”***

6. The allegations leveled by the complainant against the applicants are to be decided when the evidence will be recorded before the trial Court. Whereas, applicants/accused pleaded malafides on the part of the complainant that in order to save her from payment of the car, the complainant has lodged a false FIR against the accused persons. In this case, the complainant has been

examined and other witnesses are in attendance. In the case of Rehmatullah vs. The State (2011 SCMR 1332) wherein the Hon'ble Supreme Court of Pakistan has held as under:-

**“3. Heard. The petitioner was granted bail on 21-11-2008, which was cancelled by the learned High Court on 19-3-2009 when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude of the case within a specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously.**

**4. For the foregoing reasons, present petition is converted into appeal, allowed and bail granting order dated 6-4-2009, passed by this court, is confirmed. However, learned trial Court is directed to conclude the trial of the case within a period of two months from the date of receipt of copy of this order.”**

7. It is the well-settled principle of law that the deeper appreciation of evidence is not permissible at the bail stage and only tentative assessment is to be made. The reliance in this context is made to the case of Mehmood Akhtar v. Nazir Ahmad (1995 SCMR 310).

8. Having concluded above and while relying upon the case laws as cited above, I find that the learned counsel for the applicants has made out a case for further enquiry in terms of subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicants/accused namely (1) Shah Zaman vide order dated 30.08.2018 and (2) Zafar Aman vide order dated 19.11.2018 is hereby confirmed on the same terms and condition. However, the learned trial Court is directed to conclude the trial of the case within a period of two months from the date of receipt of a copy of this order. The applicants/accused are directed to attend the trial Court regularly. If the applicants/accused fail to appear before

it, the trial Court would be at liberty to take action against him in accordance with the law.

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 on merits.

**J U D G E**

Kamran/PA