

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application 524 of 2020

Muhammad Sajid Hussain

vs.

The State

For the Applicant / Accused : Mr. M. Shafiq A. Khosa
Advocate

For the Prosecution / State : Mr. Syed Meeral Shah Bukhari
Additional Prosecutor General

Date of hearing : 19.05.2020

Date of announcement : 19.05.2020

ORDER

Agha Faisal, J. The applicant is alleged to have lured a four year old girl, on the pretext of buying her sweets, and attempted to rape her. The applicant was arrested virtually on the spot and specifically named in the F.I.R., being F.I.R. 60 of 2020 registered on 09.02.2020 before P.S. Hyderi, Karachi, Central, citing offence/s under Section/s 376 read with 511 P.P.C., registered within half an hour of the commission of the alleged offence.

2. Learned counsel submits that the earlier plea for bail by the applicant was rejected by the Court of the learned IInd Additional Sessions Judge, Karachi, Central, in Bail Application 474 of 2020, hence, the present proceedings.

3. After considering the submissions of the learned counsel and sifting¹ through the material placed before the court, for and against the applicant, reproduction whereof is eschewed herein², it is observed as follows:

a. Learned counsel for the applicant pleaded entitlement to the concession of bail on the premise that the allegation was only of an attempt and not rape itself; the complainant was not an eye witness; and that the parents of the victim are criminal minded people intent upon blackmailing the applicant.

The Prosecution asserted that the applicant was not eligible for the relief sought as he was arrested virtually on the spot; nominated in the F.I.R.; the initial medical report and the plethora of 161 Cr.P.C. statements sustained the allegations contained in the F.I.R.; and that the imputation of mala fide with respect to the parents of the victim was a travesty in itself. Notice was issued to

¹ *Shoaib Mahmood Butt vs. Iftikhar Ul Haq & Others* reported as 1996 SCMR 1845.

² *Chairman NAB vs. Mian Muhammad Nawaz Sharif & Others* reported as PLD 2019 Supreme Court 445; *Muhammad Shakeel vs. The State & Others* reported as PLD 2014 Supreme Court 458.

the Complainant and he had attended hearings on 20.04.2020 and 27.04.2020.

- b. The P.P.C. defines the offence of rape and Section 511 criminalizes the attempt to commit a cited offence when a perpetrator does any act towards the commission thereof. The Supreme Court³ has contextualized the offence of attempt, in the perspective of rape, and illumined that commission of an overt act directed towards the object but unsuccessful, due to interruption by extenuating factors unconnected with the object, constitutes an attempt. It was further observed that if an accused has made certain movements towards the execution of his design, but failed to consummate the substantive offence due to the intervening factors, the attempt is complete. The basic concept being that if the attempt had succeeded the natural result would be that the principle offence would have been committed⁴.
- c. In the present scenario the material before the Court demonstrates that the victim was playing outside her home when she was lured away, by the applicant, on the pretext of buying her sweets. The statement of the victim further denotes that the applicant exposed his genitalia; denuded her; subjected her to sexual assault; and then attempted to rape her. The initial medical examination, conducted on the same day as the alleged offence, revealed redness of the genitals (*labia majora* and *labia minora*) of the victim. The statement of a witness, Farhan Haider, stipulates that he saw the victim bawling while running away from the applicant's house. Statements of the mother of the victim, independent witnesses and police personnel, available on file, corroborate the assertion of the offence against the applicant. In view of the preponderance of material placed before the Court there is no manifest reason to doubt the F.I.R., for the purposes of addressing this application⁵.
- d. There is no apparent reason at present for this Court to give weightage to the applicant's averment that the allegation there against is actuated by the intent of the victim's parents to blackmail the accused. The learned IInd Additional Sessions Judge, Karachi, Central, while dismissing the bail application of the applicant, had considered this contention and rejected it. The averment under consideration remained a bare assertion, as no substantiation was provided in respect thereof, and the applicant's counsel remained unable to place any cogent reasoning as to why the parents of a four year old girl would bring ignominy to their child in the prevailing circumstances⁶.

4. A tentative⁷ assessment of the material⁸ placed before the court demonstrates the existence of some tangible evidence, which,

³ *Sultan Bibi vs. Ibrahim & Others* reported as *PLD 1991 Supreme Court 705*.

⁴ Reliance was placed on *Corpus Juris Secundum*, Volume 22; *Saiqa vs. The State* reported as *1988 PCrLJ 2364*; *Muhammad Khan vs. The State* reported as *1984 SCMR 893*; *Mureed Ahmad vs. The State* reported as *1985 SCMR 9107*; *Abdul Majid vs. The State* reported as *1973 SCMR 108*.

⁵ *Abdul Razzaq vs. The State* reported as *1990 MLD 184*.

⁶ *Maqbool Hussain vs. The State* reported as *1973 SCMR 488*.

⁷ *Shahzaman vs. The State* reported as *PLD 1994 Supreme Court 65*.

⁸ *Asif Ayub vs. The State* reported as *2010 SCMR 1735*.

if left unrebutted, may lead to the inference of guilt⁹ and reasonable grounds have been shown linking the applicant with the cited offence/s¹⁰, punishable with imprisonment of ten years or more, in respect whereof the law¹¹ disapproves of the concession of bail.

5. It is also gleaned that the Prosecution has expressed cogent reasons indicating¹² the applicant's involvement in the alleged offence/s and the arguments articulated by the applicant's counsel did not qualify the present facts and circumstances to fall within the ambit of further inquiry¹³.

6. Notwithstanding having been unable to set forth any grounds for the consideration of bail, the applicant's counsel sought to rely on authority denoting general principles of law. The reliance of the applicant's counsel upon precedent, which was even otherwise distinguishable herein, is unmerited as it is settled law that the determination of each bail matter has to be predicated upon its own distinctive facts and the Court was required to ascertain whether, in the distinct circumstances, a fit case for bail was made out¹⁴.

7. In view hereof, it is the assessment of this Court that the learned counsel for the applicant has been unable to set forth a fit case for grant of post-arrest bail, hence, the present application is hereby dismissed. It is considered pertinent to record that the observations herein are of tentative nature and shall not influence and / or prejudice the case of either party at trial.

JUDGE

⁹ *Tariq Bashir & Others vs. The State* reported as *PLD 1995 Supreme Court 34*.

¹⁰ *Muhammad Imran vs. The State* reported as *2016 SCMR 1401*.

¹¹ *Section 497(1) Code of Criminal Procedure 1898; Sohail Waqar vs. The State* reported as *2017 SCMR 325*.

¹² *Rehman Ullah vs. The State* reported as *2020 SCMR 357; Ravida vs. Amjad & Others* reported as *2018 SCMR 28; Haji Shahid Hussain & Others vs. The State* reported as *2017 SCMR 616*.

¹³ As enumerated per *Section 497(2) Code of Criminal Procedure 1898; Muhammad Faiz vs. The State* reported as *2015 SCMR 655*.

¹⁴ *Muhammad Faiz alias Bhoora vs. The State* reported as *2015 SCMR 655*.