

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Bail Application No. 310 of 2020

Applicant : Haq Nawaz S/o Muhammad Jameel,  
through Mr. Naimul Haq, Advocate.

Complainant : Muhammad Asghar S/o Sher Muhammad  
through Mr. Muhammad Rafiq Brohi, Advocate.

Respondent : The State, through Mr. Zahoor Shah,  
D.P.G, Sindh.

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Date of hearing: 20.04.2020

Date of order: 20.04.2020

**ORDER**

**ABDUL MOBEEN LAKHO J:-** Through instant criminal bail application applicant/accused Haq Nawaz S/o Muhammad Jameel seeks post-arrest bail in Crime No. 235 of 2019, registered at P.S Aziz Bhatti, Karachi under Section 376(i) PPC vide order dated 23.12.2019 passed by the learned VIIIth Additional Sessions Judge, Karachi-East.

2. Briefly stated, the facts of the case are that as per verbal statement of the complainant that he is resident of Basti Malawa Wakho, Post office Khas Sheja, Tehsil Khanpur, District Rahim Yar Khan, presently residing at House No. 123, Katchhi Para, Shanti Nagar, Dalmian, Karachi alongwith his family and by profession he is a Rickshaw, Driver his brother namely Muhammad Aslam and his family also residing alongwith with him. He and his sister-in-law left for work his sister-in-law and his children namely Dua Bibi aged 07 years and son Rehan aged 04 years were in the house, when his sister-in-law return back home at 03:00 p.m. so his daughter Dua Bibi told her that she is feeling pain while urinating when she took her to the bathroom for urination she saw that the blood was oozing when she was passing urine, on which she disclosed that the neighbor Haq Nawaz offered her juice and took her to his house where he committed Zina and since then she is feeling pain at that part while passing urine and blood is also oozing. When he returned back home, his sister-in-law disclosed the incident to him and he also asked from Dua Bibi who confirmed and named Haq Nawaz on which he came to report and his claim is against Haq Nawaz son of Muhammad Jameel who committed Zina with his niece namely Dua Bibi daughter of Muhammad Aslam aged 07 years.

3. Learned counsel for the Applicant/ Accused submits that the accused is innocent and has falsely been booked in the present FIR by the complainant due to malafide intention and ulterior motive; that there is inordinate delay of about 01 day for lodging the FIR, but the complainant miserably failed to explain the such delay, hence the matter creates serious doubts and need further inquiry and the above named applicant/accused is entitled for concession of bail; that it is pertinent to mention here that the above named applicant/accused is neighbor of the complainant and the complainant having some monetary dispute with the applicant/accused and he created and manipulated false story against the applicant/accused and booked him in this false and fabricated case just to harass, pressurize and blackmail and usurp the amount of the applicant/accused in order to lodging the false FIR; that as per DNA report of the alleged victim of the FIR is negative for which the I.O of the case has testified in the Challan sheet and there is no any eye witness of the incident is mentioned in the FIR, hence the case creates serious doubt and need further inquiry; that the applicant/accused is in judicial custody and the investigation has been completed by the I.O the case and the Challan has been submitted and he is no more require for the purpose of investigation; that the above named applicant/accused is entitled for concession of bail; that it is a settled law that every accused would be presumed to be innocent until guilt proved against him; that the applicant/accused was not previously convicted and not a hardened or desperate not tempering the prosecution evidence.

4. Learned counsel for the Complainant has opposed the instant Bail Application for the reasons that the accused has committed a shameful offense with the daughter of the Complainant namely Baby Dua, aged about 7 years. He has further argued that the medical examination report has shown that the act of Zina was committed with the above said Baby. He has further argued that the delay in lodging the FIR in such like case is not materiality because as per the FIR, incident occurred on 26.04.2019 at 09:00 a.m. while the FIR was registered on 27.04.2019 at 01:30 a.m. just within 16 to 17 hours. He has further argued that no inordinate delay has been found in lodging the FIR. In support of his arguments, the learned counsel for the complainant relied upon the cases of law reported in 2013 P.Cr.L.J. 800 [Peshawar], and 2011 P.Cr.L.J. 1443 [FSC]. He has prayed for dismissal of the instant Bail Application.

5. On the other hand, learned D.P.G has opposed the instant bail application and adopted the arguments of the learned counsel for the complainant.

6. I have heard the learned counsel for the applicant/accused, Learned counsel for the complainant and Learned D.P.G for the State and perused the material available on record.

7. The allegation against the accused is of commission of Zina with a 07 years old girl and the plea of the accused is that due to old financial dispute the complainant has leveled these false allegations against him. Involving a 07 years old girl to settle any old financial dispute and put their family's honour at stakes by leveling allegations of such immoral offence knowing full well the trauma Dua Bibi will have to undergo if she is called to the witness box for evidence does not appeal to a prudent mind. Admittedly the incident took place on 26.04.2019 at 09:00 a.m and the FIR was registered on 27.04.2019 at 01:30 a.m. with the delay of 17 hours, which delay in these type of cases is of no help to the applicant/accused as it has been repeatedly held by this Court that in such like cases delay in lodging the FIR is immaterial as people naturally avoid rushing to the police because of family honour. In this regard, I am supported with the case of Nasreen Bibi vs. Farrukh Shahzad and another in 2015 SCMR 825.

8. The record shows no previous enmity between the parties. Dua Bibi has nominated the accused in the FIR by specific role, investigation conducted by the prosecution and challan has been filed and has concluded as follows: -

جب کہ متاثرہ کی میڈیکل رپورٹ نمبر MLO-63/2019 تاریخ 27-04-2019 جناح ہسپتال میں زنا کا ہونا تحریر ہے۔ ہر سبہ رپورٹس لف مشل ہیں۔ اب تک کی جملہ حاصلہ تفتیش سے یہ بات عیاں ہوئی ہے کہ متاثرہ طفلکہ دعا بی بی دختر محمد اسلم عمری 7/8 سالہ جو کہ معصوم ہے اور وقوعہ کی چشم دیدہ ہے اور ملزم سے متاثرہ یا اس کے گھر والوں سے کوئی تنازعات بھی سامنے نہیں آئے ہیں، طفلکہ متاثرہ کے بیان کے مطابق ملزم حق نواز ولد محمد جمیل نے اسکے ساتھ زنا/ذیادتی کی ہے اور میڈیکل کی رُو سے بھی زناء/دخول پایا گیا۔ جبکہ DNA میں دونوں کے بلڈ سمپل میں اسپرم اس وجہ سے نہیں پائے گئے چونکہ ملزم نے دخول کیا مگر ڈسچارج اندر نہیں ہو۔ جس بناء پر DNA رپورٹ کیمیکل رپورٹ Negative موصول ہوئی۔ جبکہ واقعات تفتیش کے مد نظر گرفتار شدہ ملزم حق نواز ولد محمد جمیل کے خلاف جرم زیر دفعہ 376(i) اور متاثرہ کو زبردستی روک رکھنا حبس بیجا میں رکھنے پر بجرم دفعہ 341 ت پ ثابت ہے۔ لہذا ملزم بالا کے خلاف چالان ذریعہ چارج شیٹ قطع کر کے داخل عدالت مجاز کرنے کی منظوری و قانونی رہنمائی فرمائیں۔ بعد منظوری افسران مقدمہ بالا میں چارج شیٹ نمبر 316/19 تاریخ 30-10-2019 قطع کر کے ترسیل آنجناب عدالت ہے۔  
رپورٹ عرض ہے۔

دستخط

**SIP غلام حسين -**  
**متعينه تهانه عزيز بهتى**  
**ايسٹ كراچى -**

9. It prima facie appears that there is enough material to dismiss the bail application and that if the applicants are released on bail at this stage it is most likely that he would intimidate or influence the victim and/or the witnesses of the present case.

10. The observations made in this order shall however not affect the decision of the case at any stage of the trial or other proceedings.

11. Hence the bail is refused having no merit for consideration.

12. These are the reasons of my short order dated 20.04.2020.

This Criminal Bail Application stands dismissed in the same terms.

**JUDGE**