

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1026 of 2020

Applicants : Aqib Khan S/o Hamayon Khan
Through Mr. Tajjammul H. Lodhi,
Advocate

Complainant : Shahnaz Bibi D/o Gohar Khan
present in person

Respondent : The State
Through Mr. Hussain Bux Baloch,
Addl. PG, Sindh a/w Inspector Kamal

Date of hearing : 18.08.2020

Date of order : 18.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.347/2020 registered under Sections 376 PPC at PS Ibrahim Hyderi, after his bail plea has been declined by the 5th Additional Sessions Judge, Malir Karachi vide order dated 10.07.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused is innocent and has falsely been implicated in this case; that the complainant has also lodged an FIR against her husband; that no DNA report is available on record to connect the applicant/accused with the commission of offence. He lastly prays for confirmation of bail. In support of his contentions, learned counsel for the applicant/accused has relied upon the following cases:

- i) *Haibat Khan vs. The State and others (2016 SCMR 2176)*
- ii) *Syed Muhammad Firdaus and others vs. The State (2005 SCMR 784)*
- iii) *Zohaib Hassan & another vs. The State (SBLR 2019 Sindh 2297)*
- iv) *Sheikh Muzaffar Rashid vs. The State (1993 PCRLJ 2262)*

4. On the other hand, complainant Mst. Shahnaz Bibi is present and states that on the day of incident, she was present in the house when applicant/accused came and forcibly committed Zina with her. Learned Addl. PG also opposes for confirmation of bail on the ground that the specific role is mentioned against the applicant/accused; that being a married woman, she was produced before medical officer after four days of registration of the FIR where her vaginal slide/swab sample was taken, which report is not available; however, the ocular evidence is very much available on record.

5. I have heard the learned counsel for the parties and perused the material available on record. Admittedly, the name of the applicant/accused appears in the FIR with specific role that on the day of incident, he entered into the house of the complainant and forcibly committed Zina with her. Further, there is no enmity suggested by the defence counsel for falsely implicating the applicant/accused in this case by the complainant, who is the sister-in-law (bhabhi) of the applicant/accused. At bail stage, only tentative assessment is to be made and deeper appreciation of evidence is not required, prima facie sufficient material is available on the record to connect the applicant/accused with the alleged offence.

6. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is

made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of '**Rana Abdul Khaliq v. The STATE and others**' [2019 SCMR 1129]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

7. In view of the above, learned counsel for the applicant/accused has failed to bring a case for further inquiry as envisaged under subsection (2) of section 497, Cr.P.C. Consequently, the interim pre-arrest bail granted by this Court to the applicant/accused vide order dated 15.07.2020 is hereby recalled and the bail application is **dismissed**.

8. The case of Haibat Khan vs. The State and others (2016 SCMR 2176) relied by learned counsel for the applicant/accused in which mere attempt was made but in the instant case, Zina was committed with the innocent lady; hence the same is distinguishable from the facts and circumstances of the case.

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.

JUDGE

Kamran/PA