

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Criminal Bail Application No.S-569 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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| 1. | For orders on office objection. |
| 2. | For hearing of main case.       |

Mr. Ghullamullah Chang, advocate for the applicant.  
Mr. Muhammad Aslam Memon, advocate for complainant.  
Ms. Rameshan Oad, A.P.G, Sindh.

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Date of hearing: 13.09.2021

Date of decision: 17.09.2021

**ORDER**

**KHADIM HUSSAIN TUNIO, J.-** Through captioned application under section 497 Cr.P.C, the applicant prays for his release on bail in case emanating from Crime No. 24 of 2021, for offence punishable under section 377, 511 and 337-J PPC registered at P.S. Matiari. The applicant had approached the learned Trial Court earlier with the same plea but it was declined by the learned Additional Sessions Judge-I/MCTC, Matiari vide his order dated 27.04.2021.

2. On 11.04.2021, the complainant found his son unconscious on the corner of the house of one Jaleel Memon and immediately took him to the hospital. When his son gained consciousness, he disclosed to his father/complainant that one Farooque Khaskheli gave him a spiked sweet (*rasgulla*) and when he was semi-conscious after eating the same, the applicant Farooque tried to commit sodomy with him, but when complainant's son Salman raised cries, he hit him and knocked him unconscious. After the treatment of his son, the complainant appeared at the police station and lodged the instant FIR.

3. Learned counsel for applicant contends that there is a delay of 2 days in the lodging of FIR and no plausible explanation has been provided for the same; that despite it being day time, no one from the neighborhood witnessed the alleged incident; that the complainant is habitual of lodging false FIRs u/s 377 PPC against innocent people involving his son as a victim

and had also lodged FIR bearing crime No. 12 of 2016 u/s 377 PPC; that the victim was not undressed during the commission of offence and his father refused to get his anal swabbing done and admitted before the medical officer that no such offence was committed per the provisional medical certificate; that the DNA report is negative and no such offence has been committed; that all the PWs are interested, therefore case of the applicant requires further inquiry.

4. Learned counsel for the complainant argues that the applicant is specifically named in the FIR; that the delay in the lodging of FIR has been explained as the complainant was busy with the treatment of his son; that the offence committed by the applicant is a heinous one; that all the witnesses u/s 161 Cr.P.C statement have implicated the applicant; that the victim raised cries due to which the applicant also hit him and said injuries have been supported by the medical evidence. In support of his contentions, he has relied on the case law reported as *2004 MLD 310* and *2021 YLR 173*. Learned APG argued in the same line as argued by the counsel for complainant.

5. I have heard the learned counsel for the respective parties and have gone through the record.

6. It is a matter of record that the alleged incident took place on 11.04.2021, whereas the FIR was lodged on 13.04.2021, after a delay of two days. No explanation for the same was provided besides the fact that the complainant was busy with the treatment of his son. However, what this Court fails to understand is what stopped the complainant from approaching the police station to lodge the FIR when his son initially disclosed said facts to him on the evening at 6:30 p.m. of the same day even though the distance between the police and the place of incident was barely a kilometer. Moreover, the alleged place of incident was a residential area where a mosque was built as well, yet no one witnessed the alleged incident nor did anyone hear the cries of the victim although he claims to have shouted and raised cries at the time of the offence. Per the observations made in the DNA Test Report issued by the **Forensic and Molecular, Biology laboratory, LUMHS Jamshoro**, no male DNA or semen stains or sperm was found on the clothing of the victim. Per the final medicolegal certificate, no signs of sexual assault were found on the body of the victim and only signs of his intoxication were found. The

blood sample of the victim was also tested for any known intoxicating substances, but none were found. The injuries received by the victim were declared as **337-L(ii)** and **337-F(i)** which are both bailable. What is also a surprising aspect of the case is that per the provisional medical certificate dated 11.04.2021, the father/complainant refused to consent to the examination of the anal region of the victim/son and admitted that no such attempt of sexual assault was performed. Consequently, the case of the applicant becomes one of further inquiry falling within the purview of section 497(2), Code of Criminal Procedure. Under similar circumstances, the Hon'ble Apex Court in cases reported as **2016 SCMR 1399**(*Muhammad Nauman Hanif v. the State and another*) and **2016 SCMR 1523**(*Abdul Ghaffar v. The State and others*) was pleased to extend bail to the applicants.

7. Pursuant to the above discussion, given the circumstances of the case and the cases of *Muhammad Nauman Hanif* and *Abdul Ghaffar (supra)*, this Court is of the view that the applicant Farooque has made out a case for grant of bail, therefore the same is granted to him subject to his furnishing solvent surety in the sum of Rs. 200,000/- (*Rupees two hundred thousand only*) and PR bond in the like amount to the satisfaction of the learned trial Court.

8. Needless to add here that the observations made hereinabove are tentative in nature and will not cause prejudice to the case of either party at the trial.

JUDGE