

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 09 of 2022

Applicant : Joil s/o. Rehmat Masih,
through Mr. Tariq Hussain, advocate

Respondent : The State, through Ms. Rahat Ehsan, Addl. P.G.

Complainant : Mst. Abida Pervaiz (nemo)

Date of hearing : 16.02.2022

Date of order : 16.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Joil s/o. Rehmat Masih seeks post-arrest bail in Crime No. 568/2021, registered at P.S. Korangi, Karachi under Section 376, P.P.C. His earlier application for the same relief bearing No. 6217/2021 was dismissed by the learned VIIth Additional Sessions Judge, Karachi-East vide order, dated 09.12.2021.

2. As per F.I.R., the allegation against the applicant is that from 15.09.2021 to 23.09.2021 he committed rape 3/4 times on his niece, namely, Meerab aged about 9/10 years.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant, who is his real sister, on account of family dispute over landed property; that there is delay of 23 days in lodging of F.I.R. for that no plausible explanation has been furnished by the complainant; that the negative D.N.A. report makes the case against the applicant of further enquiry. In support of his contentions, learned counsel has relied upon the case-law report as 2016 SCMR 1523, 2017 SCMR 366, 2019 YLR 2442, 2021 MLD 493, 2019 MLD 1168, 2016 MLD 307, 2010 P.Cr.L.J. 1775, 2010 YLR 1839, 2013 MLD 1115, 2012 YLR 2228, 2018 P.Cr.L.J. 132 and unreported order passed in Cr. Bail Application 625 of 2016.

4. On the other hand, learned Addl. P.G. vehemently opposes this application on the ground that minor Meerab has fully implicated the applicant for commission of the alleged offence in her statement recorded under section 164 Cr.P.C.; that the medical evidence fully supports the prosecution case; that no reasonable ground exists to disbelieve the allegations leveled against the applicant, who is real brother of the complainant and real maternal uncle of minor baby/victim

5. I have considered the arguments advanced by the learned counsel for the parties and also perused the material available on record.

6. It appears that the husband of the complainant was admitted in SIUT on 15.09.2021; therefore, the complainant was staying in the said hospital leaving her children at the house of her real brothers i.e. applicant and Kamran. On 23.09.2021 husband of the complainant died; she brought his dead body at her brothers' house and after funeral ceremony she was continuously residing there. On 07.10.2021 her daughter Meerab weepingly told her that when she was staying at hospital, applicant committed Zina on her 3 to 4 times and on that day he forcibly took her to room but she escaped from him. It further appears that after lodging of the F.I.R. baby Meerab was produced on 09.10.2021 for medical examination and as per MLC, her hymen was torn with swelling and congestion. In the opinion of MLO, there was fresh act of violent sexual intercourse. The statement of minor baby Meerab was also recorded under section 164, Cr.P.C. wherein she has fully implicated the applicant for committing rape on her.

7. So far contention of learned counsel for the applicant with regard to negative D.N.A. report is concerned, suffice it to say that negative D.N.A. report cannot negate ocular account of P.W./victim, whose solitary statement is sufficient to connect the applicant with the commission of alleged offence. As regards applicant's claim of false implication on account of dispute over landed

property, it is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law. The alleged offence under section 376, P.P.C. being punishable for death or imprisonment not less than ten years falls within the prohibitory clause of section 497, Cr.P.C. Any defence plea or hypothetical question which could be imagined, would not make it case of further inquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence. The case-law cited by the learned counsel for the applicant being on distinguishable facts are not supportive to the case of the applicant.

8. For the forgoing facts and reasons, I dismiss this criminal bail application. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE

Athar Zai