

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Bail Application No. 2363 of 2021

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Date	Order with Signature(s) of Judge(s)
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For hearing of bail application.

09.03.2022

M/s. Ubedullah Malik & Shaharyar Akbar Bhanbhro,  
advocates for applicant/accused

Mr. Faheem Hussain Panhwar, D.P.G.

**ZAFAR AHMED RAJPUT, J.-** Through instant criminal bail application, applicant/accused Aijaz Ali Soomro s/o Mewa Khan seeks post-arrest bail in Crime No. 96/2021, registered at P.S. Jackson, Karachi under section 376, P.P.C. His earlier application for the same relief in Sessions Case No. 1280/2021 was dismissed by the learned Additional Sessions Judge-X, Karachi-West vide order, dated 02.10.2021.

2. The allegations against the applicant are that he, during the night of 13/14.04.2021 committed rape on his step daughter, namely, Syeda Noor Fatima, 13 years old, who also committed rape on her repeatedly in past, for that he was booked in the aforesaid Crime/F.I.R. lodged by the complainant Mst. Kishwar Batool, who is his ex. wife and mother of the alleged victim.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives; that the D.N.A. report is in negative; that as per medico-legal certificate the hymen of the victim baby was old torn and healed; that the applicant is behind bars since day of his arrest i.e. 14.04.2021 and the trial shall take some time; therefore, no purpose would be served for keeping him in custody for indefinite period; hence, the applicant is entitled for the bail on the ground of further inquiry.

4. On the other hand, learned D.P.G. vehemently opposes this application on the ground that the victim baby was residing with the applicant at his house, who has fully implicated him for commission of the alleged offence in her statement recorded under section 164, Cr.P.C.; that no reasonable ground exists to disbelieve that the allegations leveled against the applicant; as such, he is not entitled to the concession of bail.

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

6. Perusal of the record shows that after lodging of the F.I.R. the applicant was arrested on 14.04.2021 and since then he is confined in judicial custody. Police has already submitted charge sheet before the Court concerned; hence, the custody of the applicant is no more required by the police for further investigation. As per her own contention, the complainant is residing with her husband Muhammad Dilawar Raza since last one year; before that, she married to applicant and before that to one Syed Akmal Hussain, who is the real father of baby Noor Fatima. No explanation is available on record as to why baby Noor Fatima was residing with her step-father, who was stranger to her, and was not residing with her real mother, the complainant.

7. As per M.L.C., baby Noor Fatima appeared for her medical examination before the lady doctor on 15.04.2021 at 12:45p.m. (*within 36 hours*). On clinical examination, no mark of violence was seen on the body of said baby. On per-vaginal examination, her external genitalia was normal, no tenderness, swelling, erythema or laceration was found. Labia Majora was normal, while hymen was old torn and healed and bleeding & discharge per vagina was negative. Keeping in view the clinical

examination, nothing could be opined regarding the fresh act of sexual intercourse with said baby, which prima facie negates the allegation that she was subjected to rape on the night of 13/14, April, 2021. Besides, the DNA report was also negative.

8. The only evidence prosecution has against the applicant for connecting him with the commission of alleged offence is the statement of Baby Noor Fatima recorded under section 164, Cr.P.C., the veracity thereof shall be determined at the trial.

9. Keeping in view the circumstances discussed above, it is a case of further inquiry as contemplated under sub-section (2) of Section 497, Cr. P.C. Accordingly, I admit the applicant to bail in aforesaid crime/offence subject to furnishing by him solvent surety in the sum of Rs. 1,00,000/- (*Rupees One Lac only*) and PR bond in the like amount to the satisfaction of the trial Court.

10. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial Court while deciding the case of the applicant on merits. In case the applicant misuses the concession of bail in any manner, the trial Court shall be at liberty to cancel the same after giving him notice, in accordance with law.

JUDGE

*Athar Zai*