

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 512 of 2020

For hearing of bail application.

Mr. Alam Sher Bozdar Advocate along with applicants.
Mr. Muhammad Yasir Arain Advocate for complainant.
Mr. Zulfiqar Ali jatoi, Additional P.G for the State.

Date of Hearing: 12-10-2020

Date of Order: 12-10-2020

ORDER

Aftab Ahmed Gorar J. On dismissal of their Bail Application by learned Additional Sessions Judge, Daharki vide order dated 09.09.2020, applicants Dildar Hussain alias Dildar and Imam Bux both by caste Bughio have approached this Court by filing instant Crl. Bail Application under Section 498-A Cr.P.C, for pre-arrest bail in case FIR No. 183 of 2020, registered at P.S, Daharki for offences under Sections 337 & 34 PPC.

2. The story of the prosecution in nutshell is that complainant Ameer Deen Bughio lodged an FIR on 23.08.2020, alleging therein that on 07.06.2020, his son Shahriyar aged about 10/11 years had gone outside his house, but after passing two hours he did not return back, however, complainant in association with his son Safdar and cousin Ishaque alias Panjal went for searching his son and during search, they heard noise of Shahriyar from Juar crop, on which complainant party went into Juwar crop, where they saw and identified accused Dildar and Imam Bux (applicants). Accused Dildar caught hold of his son

Shahriyar from arms, while accused Imam Bux was committing forcible sodomy with his son Shahriyar. Accused on seeing complainant party ran away. It is further alleged that accused persons kept the complainant party on hollow hopes for resolution of matter through Faisela, but later on accused refused point blank to hold any Faisela. Consequently, above FIR was lodged.

3. Learned counsel for the applicants argued that the applicants are innocent and have not committed any alleged offence, but the complainant just to damage the respect and dignity of the applicants and to humiliate get them involved in this false case over the dispute over landed property; that there is considerable delay of 02-months and 16-days in lodgement of FIR, for which no plausible explanation has been offered by the complainant, which gives presumption of false implication of the applicants after due deliberation and consultation; that the medical evidence does not corroborate the version of the complainant party; that there is no complaint with regard to misuse of concession of interim pre-arrest by the applicants as after grant of interim pre-arrest bail, the applicants joined the investigation and is regularly attending the trial Court; that the investigation is over and the applicants are no more required for further investigation. In support of his contention, learned counsel placed reliance on cases of **Babar v. The State (2020 SCMR 761)**, **Azam Ali Shahid v. The State (2017 PCr.LJ Note 247)**, **Ghulam Abbas v. The State (2013 PCr.LJ 1402)**, and **Niamat Ali v. The State (2012 MLD 1965)**.

4. Learned counsel appearing on behalf of complainant opposed the confirmation of bail on the ground that the applicants are nominated in the FIR with specific role which is corroborated by the medical evidence.

5. Learned Additional P.G for the State recorded no objection if the interim pre-arrest bail of applicants is confirmed on the ground that there is unexplained delay of about 02-months and 16-days in lodgement, which has not been plausible explained by the complainant.

6. After hearing arguments and perusal of record it reveals that there is considerable delay of 02-months and 16-days in lodging the FIR, for which *prima facie* no plausible explanation has been given by the complainant, which gives presumption of false implication of the applicants after deliberation and consultation as serious mala fide are alleged on the part of the complainant party. Furthermore, alleged incident took place on 07.06.2020 and the victim was examined by Medical Officer on 25.08.2020 after delay of two and half months and as per opinion of Medical Officer, there was no mark of violence on the body of victim and no laceration and damage was seen around the anus of the victim, as such the applicability of Section 377 PPC is to be seen by learned trial Court after recording evidence. Moreover, investigation is over as the final charge-sheet has been submitted, as such the applicants are no more required for further investigation. The applicants are regularly attending this Court as well as learned trial Court as there is no complaint of misusing the concession of interim bail by the applicants.

7. For what has been discussed above, I am of the considered view that the case against the applicants calls for further enquiry as envisaged by Subsection 2 of Section 497 Cr.P.C and mala fide on the part of complainant has been alleged by the applicants. Accordingly, instant Crl. Bail Application is allowed and the interim pre-arrest bail already granted to the applicants by this Court vide order dated 11.09.2020 is hereby confirmed on same terms and conditions.

8. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial Court shall not be influenced in any manner whatsoever.

J U D G E

Ahmad