

Order Sheet

IN THE HIGH COURT OF SINDH, SINDH.

Cr. Bail Application No. 496 of 2021.

Date	Order with signature of Hon'ble Judge
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Applicants: 1. Sajid S/o Zahid.
2. Noman S/o Liaquat Ali.
3. Yousuf S/o Zar Wali.
Through Ms. Zahida Parveen, Advocate.

The State: Through Mr. Zahoor Shah, D.P.G.
Deputy Prosecutor General Sindh.

Date of hearing: 24.05.2021

Date of order: 24.05.2021

ARSHAD HUSSAIN KHAN-J.:- Through this bail application, Applicants/Accused Sajid son of Zahid, Noman son of Liaquat Ali and Yousuf son of Zar Wali seek post-arrest bail in Crime No. 92 of 2021 registered with Police Station Manghopir, Karachi, for offences under Sections 376, 511, 34 PPC.

2. The Prosecution case as per the FIR is that on 11.02.2021 at about 0015 hours the complainant namely, Mst. Anamta D/o Salahuddin lodged FIR stating therein that she works as maid and on 11.02.2021 when she was present at Main Road Manghopir near *Mazar Baba Manghopir*, Karachi, one black Corolla car stopped near to her and three unknown persons got down from it and forcibly put her into the car and tried to rape her, however, upon her hue and cry, one police mobile, patrolling in the area, reached at the scene and apprehended the culprits. On inquiry, the said culprits disclosed their names as Sajid son of Zahid Hussain, Muhammad Noman son of Liaquat Ali Khan and Yousuf son of Zarwali Khan. The said persons were arrested by the police and prepared memo of arrest and recovery and obtained her signature. In the meantime, she along with police party came to police station where she lodged her complaint, hence this FIR.

3. Learned counsel for the applicants/accused has mainly contended that the applicants are innocent and have falsely been implicated in the case with malafide intentions and ulterior motives on the part of the complainant with collusion of the police. Learned

counsel further contended that there is inordinate delay of about two hours in lodging of the FIR, which creates serious doubt in the prosecution story. She has further contended that after lodging the FIR, the complainant neither appeared before the trial court nor before this court despite notice through I.O of the case nor she is traceable and thus in such circumstances, false implication of applicants/accused by police for ulterior motives cannot be ruled out as such the case of the applicants/accused falls within the ambit of further inquiry. It is also contended that there is no medical report produced by the prosecution, which could connect the present applicants/accused with regard to the commission of offence; the victim of the FIR has not been produced before the Judicial Magistrate nor her statement has been recorded at all, there is no solid evidence against the applicants/accused, therefore, the applicants/accused persons are entitled for concession of bail.

4. Conversely, learned D.P.G while opposing bail application contended that the applicants/accused were apprehended at the spot and they have assigned their specific role, which connects them in the commission of offence. Lastly, he has prayed that the bail application may be dismissed.

5. I have heard learned counsel for the applicants/accused, learned Deputy Prosecutor General Sindh for the State and have also gone through the material available on the record.

6. The record transpires there is no medical report produced by the Prosecution, which could connect the applicants/accused with the commission of the alleged crime. Record also does not show that whether the statement of the complainant (victim) has been recorded or not and/or has she been produced before the Judicial Magistrate or not. Record further transpires that after lodging the FIR, the complainant neither appeared before the trial court nor before this court despite notices through I.O of the case nor she is traceable now. Such facts make the case of the applicants/accused one for the further inquiry.

7. The record shows that the applicants/accused are not previous convict nor hardened criminals. Moreover, the applicants/accused have been in continuous custody since their arrest and are no more required for any investigation nor the prosecution has claimed any

exceptional circumstance, which could justify keeping them behind the bars for an indefinite period pending determination of their guilt. It is well settled law that while examining the question of bail, Court has to consider the minimum aspect of the sentence provided for the alleged offence. In the instant case, no exception has been pointed out by the prosecution specially in the circumstances when applicants/ accused are first offender and nothing contrary to the same have been produced, thus I do not find this to be a case where bail should be refused as an exception and for this reason, the applicants/accused were admitted to bail subject to their furnishing solvent surety in the sum of Rs.1,00,000/- each and P.R. Bond in the like amount to the satisfaction of the trial Court, by my short order dated 24.05.2021.

8. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial Court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicants/accused misuse the bail, then the trial Court would be competent to cancel their bail without making any reference to this Court.

Above are the reasons of my short order dated 24.05.2021.

JUDGE

jamil