

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1217 of 2021

Applicant : Fahad Khalid S/o Khalid Mehmood
Through M/s. Muhammad Jameel
& Mumtaz ul Hassan, Advocates

Complainant : Nusarat Shaheed D/o Liaquat Ali
Through Mr. Loang Khan Chandio,
Advocate

Respondent : The State
Through Mr. Ali Haider Saleem
Deputy Prosecutor General, Sindh

Date of hearing : 15.07.2021

Date of order : 15.07.2021

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.380/2021 registered under Sections 354, 506, 34 PPC [challan U/s 354-A, 506, 34] at PS Docks, Kemari Karachi, after his bail plea has been declined by the learned Additional Sessions Judge-Xth, Karachi West vide order dated 19.06.2021.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Per learned counse, the applicant/accused is innocent and has falsely been implicated in this case; that initially the FIR was registered under Sections 354, 506, 34 PPC and interim challan was filed by ASI Muhammad Zaman under the same Sections before the learned Magistrate; that the applicant/accused moved a bail application before the

learned Magistrate, who while deciding the bail application, passed order that accused causes assault and strips her clothes and exposes her to the public view, as such constitutes the offence under Section 354-A PPC which is exclusively triable by the Court of Session Judge and dismissed the bail application of the applicant. Section 354-A PPC was also added in the final challan and the bail was filed before the learned trial Court but the same was dismissed. He further contended that the allegation levelled against the applicant/accused is fabricated having no truth; that after delay of 11 days, the complainant produced her shirt (cholo) to the I.O. and such memo was prepared which shows that from the shoulder it was stripped but the Burka worn by the complainant was not stripped, therefore, the entire story seems cooked, whereas, applicant/accused is in jail and is no more required for further investigation. Lastly, he prays for grant of post-arrest bail to the applicant/accused.

4. On the other hand, learned counsel for the complainant as well as learned APG have opposed for grant of post-arrest bail on the ground that the applicant/accused is a habitual offender and he always uses this kind of tactics as such he is not entitled for concession of bail. Learned APG has produced criminal record of the applicant which shows that applicant/accused is booked only in the present case, otherwise no case is pending against him.

5. I have heard the learned counsel for the parties and perused the material available on record. Initially, the FIR was registered under Sections 354, 506,34 PPC and interim challan was filed in the same Sections but subsequently the learned Magistrate having view that Section 354-A PPC is applicable in this case dismissed the bail application and

thereafter Section 354-A was inserted. The definition of 354-A PPC reads as unde:

“354-A Assault or use of criminal force to woman and stripping her of her clothes:

Whoever assaults or uses criminal force to any woman and strips her of her clothes and in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine.

6. In the case of Qadir Shah & others v. The State reported in 2009 SCMR Page 913; wherein the Hon’ble Supreme Court held that the plain reading of Section 354-A PPC reveals that to attract the said penal provisions, two conditions must be fulfilled, firstly, there should be stripping of the clothes and secondly the victim in that condition be exposed to the public view. Both the conditions must co-exist to bring the case within the ambit of Section 354-A PPC. In the instant case, FIR was registered on 29.04.2021 wherein the complainant has produced the shirt (cholo) on 08.05.2021 with a delay of 9 days. Further, on the day of incident the shirt and Burka was worn by the complainant and as per her statement, her shirt (cholo) was stripped by the applicant/accused from her shoulder but surprisingly, her Burka was not stripped from the shoulder. Further, FIR was lodged with an un-explained and inordinate delay of about 08 hours, no independent person was available or shown in the FIR to corroborate the prosecution/complainant version. The place of incident is a busy place viz. Near Ghousaid Masjid New Haji Camp Sultanabad. It is yet to be decided by the learned trial Court when evidence will be recorded whether Section 354 PPC is applicable or Section 354-A PPC. Hence, this is a case of further enquiry. The applicant is in jail and is no more required for further investigation.

7. In view of the above, learned counsel for the applicant/accused has succeeded to make out a case for

further inquiry as envisaged under section 497 (2) Cr.P.C. Consequently, the instant bail application is **allowed**. Applicant/accused named above is enlarged on post-arrest bail subject to his furnishing solvent surety in the sum of Rs.100,000/- (Rupees one lac only) and PR bond to the satisfaction of the learned trial Court.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran