

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No. S- 652 of 2020

1. For orders on o/objection.
2. For hearing of Bail Application.

Mr. Shamsuddin N.Kobhar Advocate along with applicant.

Mr. Saeed Ahmed Chachar Advocate along with complainant.

Mr. A.R Kolachi, Deputy P.G for the State a/w ASI Bashir Ahmed Shaikh, I.O of the case.

Date of Hearing: 16-11-2020
Date of Order: 16-11-2020

ORDER

Aftab Ahmed Gorar J. On dismissal of his Bail Application by learned 3rd Additional Sessions Judge, Mirpur Mathelo vide order dated 29.10.2020, applicant Muhammad Nawaz alias Nawaz s/o Ghulam Rasool by caste Siyal has approached this Court by filing instant Crl. Bail Application under Section 498-A Cr.P.C, for pre-arrest bail in case FIR No. 202 of 2020, registered at P.S, Mirpur Mathelo, under Sections 376, 337A(i), 337L(ii) PPC.

2. The gist of the allegations against the present applicant is that on 03.10.2020, he being armed with pistol along with unknown culprit facilitated co-accused Khalid Hussain, who alleged committed rape with baby Zaiba, daughter of complainant on the point of pistol. It is further alleged in the FIR that on the intervention of complainant party, all accused persons caused injuries to baby Zaiba. Consequently, above FIR was lodged on 07.10.2020 at 1920 hours.

3. Heard learned counsel for the applicant, learned counsel for the complainant as well as learned Deputy P.G for the State so also scanned the material available on record. Learned counsel appearing on behalf of complainant as well as learned DPG opposed the confirmation of interim pre-arrest bail earlier granted to the applicant by this Court on the ground that applicant is nominated in the FIR with specific role.

4. Perusal of FIR reflects that the role attributed to the present applicant Muhammad Nawaz alias Nawaz is that on 03.10.2020, he in association with co-accused Khalid Hussain and an unidentified culprit forcibly kidnapped baby Zaiba from her house and at about 0200 hours (night) complainant woke up on the barking of dogs and found that his daughter baby Zaiba is not available in the house. Then, the complainant party while making search of baby Zaiba when reached near cotton crop, adjacent to their house, they heard cries of baby Zaiba and went there, where they saw that co-accused Khalid Hussain is committing rape with her on the show of pistol, while applicant along with unknown culprit was standing there, however, on the intervention of complainant party, all three accused are alleged to have caused injuries to baby Zaiba. The main role of committing alleged rape is against co-accused Khalid Hussain, while mere presence of applicant is alleged at the spot. So far allegation of causing injuries to victim is concerned, the same requires evidence, as the injuries are alleged to have been caused by all three accused.

5. Furthermore, during course of investigation, the applicant was found innocent, as at the time of alleged incident, he being shopkeeper

was available at his shop at Daharki and on the basis of CDR reports so also statements of shopkeepers, the I.O declared the applicant as innocent and kept his name in column-2 of the charge-sheet, but learned Magistrate did not agree with the opinion of I.O and took cognizance against the applicant. In such a situation, the participation of the present applicant in the present case requires further enquiry. Moreover, there is no complaint with regard to misuse of concession of interim pre-arrest bail by the applicant, as he is regularly attending this Court as well as learned trial Court.

6. For what has been discussed above, I am of the considered view that the applicant has succeeded to make out a case for confirmation of interim bail. Accordingly, instant Crl. Bail Application is allowed and the order dated 04.11.2020 granting interim pre-arrest bail to the applicant by this Court is hereby confirmed on same terms and conditions.

7. 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