

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Bail Application No. S – 294 of 2020**

Date	Order with signature of Judge
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**For hearing of bail application**

1. For orders on office objection at flag 'A'
2. For hearing of bail application  
(Notice issued)

**09.10.2020**

Mr. Nazir Ahmed Junejo Advocate for the Applicant  
Mr. Abdul Hameed Sangi Advocate for the complainant  
Mr. Shafi Muhammad Mahar, DPG for the State

**ORDER**

**Aftab Ahmed Gorar, J-** Through instant Criminal Bail Application, the applicant/accused Muhammad Aqil S/o Ahmed Burdi, seeks pre-arrest bail in Crime No.55/2020 registered at Police Station, Faiz Ganj, for offences punishable under Sections 452, 376, 511 and 34 PPC.

2. The facts of the prosecution case, in brief are that on 21.05.2020 complainant Muhammad Hayat Dakhan lodged the FIR at police Station, Faiz Ganj in respect of the incident, which allegedly took place on 16.05.2020 at 0800 hours, stating therein that his daughter Mst. Shama Khatoon aged about 30 years was got married with Aijaz Ali Dakhan, who has divorced her about eleven months back, as such she was residing with him. On the day of incident, early in the morning, he went to Luckyari Town for purchasing articles, where his brother-in-law Abdul Hakeem met him, hence they both

came to his (complainant) house, as soon as they entered in the house, heard cries of Mst. Shama Khatoon, they saw that accused Aqil Burdi was attempting to commit zina with her, whereas, the victim was resisting, two unknown persons having pistols were present there. On the cries of the victim, his nephew Abdul Ghaffar also reached there while giving hakals, thereafter the accused persons left her and escaped away. Thereafter the co-villagers gathered at the place of incident, to whom he narrated the facts and then to the *nekmards*, who asked the complainant that they would approach the accused persons, but all in vain, hence such FIR was registered, as stated above.

3. The applicant on having been refused pre-arrest bail by the Court of learned 4<sup>th</sup>. Additional Sessions Judge, Khairpur vide order dated 06.06.2020 hence he has preferred the instant bail application.

4. It is contended by learned counsel for the applicant/accused that the applicant/accused being innocent has been involved in this case falsely by the complainant party otherwise he has nothing to do with the alleged incident; that the FIR of the incident has been lodged with delay of about five days; that all the PWs are related inter se, hence their version cannot be believed as trustworthy and confidence inspiring; that there is no medical certificate of the victim; that the complainant has lodged the present FIR just to usurp the landed property of the applicant/accused; that prior to this the brother of present applicant/accused namely Kamil has filed a Criminal Miscellaneous Application under Section 22-A and 22-B

Cr.P.C against the present complainant, hence the complainant has managed the present FIR. He lastly contended that the applicant/accused has made-out a case for grant of pre-arrest bail on the point of further enquiry. In support of his contentions, he has relied upon the case of ***Muhammad Arif v. The State (2009 M L D 19 [Lahore])***.

5. Learned DPG for the State and learned counsel for the complainant have opposed to grant of pre-arrest bail to applicant/accused by contending that the applicant/accused has committed a heinous offence and the delay has been properly explained by the complainant, whereas, only the present applicant/accused has been nominated in the FIR; no malafides has been pointed-out; that the charge has been framed against the applicant/accused and the now the case is fixed for evidence. In support of their contentions, they have relied upon ***cases of Jaffar Hussain and others vs. The State (2007 P.Cr L J 615 [Lahore]) and Rajo Khan and 03 others vs. The State (2010 P. Cr L J 452 [Karachi])***

6. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant, learned DPG for the State and perused the record. The FIR of the incident has been lodged with delay of about five days and such delay having not been explained plausibly by the complainant could not be ruled-out, which appears to be significant. The allegation against applicant in commission of the offence is that he tried to commit rape with the victim Mst. Shama Khatoon, whereas, no medical examination of the victim was

conducted in order to establish the marks of violence on her body. Whether the applicant actually has attempted to commit rape with the victim? It requires determination at trial after recording evidence of the prosecution witnesses. More-so, the version of the complainant as well as two eye-witnesses being father, maternal-uncle and cousin of the victim cannot be believed as trustworthy and confidence inspiring for the reason that it was clearly mentioned in the F.I.R that they all had seen accused while attempting to commit rape with the victim but they did not try either to rescue the victim or to apprehend the accused but stand like a silent spectators. In these circumstances, the applicant/accused is found entitled for grant of pre-arrest bail on the point of further inquiry. Consequently, the interim pre-arrest bail earlier granted to the applicant/accused vide dated 10.06.2020 is hereby confirmed on same terms and conditions. The applicant/accused is directed to regularly attend the trial Court till final disposal of the case.

7. The *case-law* which is relied upon by learned D.P.G for the State and learned counsel for the complainant are on distinguishable facts and circumstances, hence cannot be relied upon. The observations made herein above are tentative in nature and will prejudice the case of either party.

8. The instant bail application is disposed of accordingly.

Judge