

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail. Appln. No.S- 588 of 2020

For hearing of bail application

23.11.2020

Mr. Imdad Ali Khamisani Advocate for the Applicant
Mr. Manzoor Hussain Mahessar Advocate for complainant
Mr. Zulfiqar Ali Jatoi, Additional PG for the State

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ORDER

AFTAB AHMED GORAR, J: Through instant Criminal Bail Application, the applicant/accused Zohaib Ahmed S/o Zamir Hussain Memon, seeks pre-arrest bail in Crime No.70/2020 registered at Police Station, Hingorja, District Khairpur, for offences punishable under Sections 376 and 511 PPC.

2. The facts of the prosecution case, in brief are that on 19.09.2020 at 2200 hours, complainant Nasrullah Memon lodged the FIR at police Station, Hingorja in respect of the incident, which allegedly took place on 17.09.2020 at 16:30 pm, stating therein that he was informed by his daughter Mst. Safeena aged 12/13 years through mobile phone that on the day of incident her mother, brother and sisters had gone in the neighbourhood for offering condolence and she was alone staying at home, all of a sudden at about 7:30 pm, the accused Zohaib Ahmed intruded into his house and attempted to commit zina with his daughter Mst. Safeena, she raised cries, which attracted her mother and maternal-uncle namely Ghulam Rasool, they rushed to rescue her,

but on seeing them coming, the accused escaped away, hence such FIR was registered, as stated above.

3. The applicant on having been refused pre-arrest bail by the Court of learned Additional Sessions Judge-IV, Khairpur vide order dated 09.10.2020 hence he preferred the instant bail application seeking the grant of pre-arrest bail.

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; that there is delay of two (02) days in lodgment of the FIR, for which no plausible explanation has been furnished; that this is an unseen incident neither the complainant nor the witnesses have seen the applicant/accused while attempting to commit zina upon the victim; that both the eye-witnesses of the alleged incident being mother and maternal-uncle of the alleged victim are related, inter se and setup; that there is malafide on the part of the complainant to involve the present applicant in a false case; that the complainant Ghulam Rasool now has also filed his affidavit in favour of the applicant, which makes the case of double version. He lastly contended that that the interim pre-arrest bail already granted to the applicant/accused on 12.10.2020 may be confirmed on same terms and conditions.

5. Learned Additional PG as well as learned counsel appearing for the complainant recorded no objection for confirmation of the interim pre-arrest bail to the applicant/accused by contending that the

complainant Ghulam Rasool Memon has sworn his affidavit before this Court by stating that he has not given the name of the present applicant/accused in the FIR.

6. I have heard the learned counsel for the applicant/accused, learned counsel for the complainant, learned Additional PG for the State and perused the record. The FIR of the incident has been lodged with delay of about two (02) 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 the applicant in the commission of offence is that he has attempted to commit zina upon the victim girl Safeena aged about 12/14 years, whereas, Complainant Ghulam Rasool now by filing his affidavit has recorded no objection to grant of pre-arrest bail to the applicant. In these circumstances, it is rightly being contended by learned counsel for the applicant that the applicant is entitled to be granted pre-arrest bail on point of further enquiry. Consequently, the interim pre-arrest bail earlier granted to the applicant/accused vide dated 12.10.2020 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 instant bail application is disposed of accordingly.

Judge