

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Bail Appln No.1416 of 2021

Date	Order with signature of Judge
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For hearing of bail application

10.11.2021

Mr. Kanwar Aftab Bhatti, advocate for the applicant
Mr. Fahim Ahmed Panhwar, DPG a/w ASI Ch. Muhammad
Aslam of P.S. Peerabad
Ms. Siddiqa Nausheen, advocate for the complainant

AFTAB AHMED GORAR:- Through this bail application, applicant Nikson Malik son of Malik Masih has assailed the legality and propriety of order dated 02.07.2021 passed by Xth learned Additional Sessions Judge Karachi (West), on Cr. Bail Application No.3058 of 2021 filed under Crime No.370 of 2021 registered at Police Station Peerabad, Karachi for offences punishable under Sections 376/511 PPC, whereby after hearing the parties, dismissed the bail plea of the applicant.

2. It is contended by the learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case by the complainant with malafie intentions and ulterior motives. He further contended that there is three days delay in lodging of FIR for which no plausible justification has been given. It is further contended that there are contradictions amongst the statement of victim and other witness, which creates serious doubts. He has also submitted that the medical certificate does not demonstrate any violence, bruise or other signs as alleged. He contended that facts of this case does not fall within the ambit of Section 376 PPC whereas Section 511 PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. hence this is a fit case for grant of bail.

3. Learned DPG objected to the grant of bail and submitted that the applicant is nominated in the FIR with the alleged role of attempt to

commit rape of victim, who is a minor girl. He has also contended that the applicant has been fully implicated by the victim girl in her statement recorded under section 161 Cr.P.C. He submitted that medical report also supports the version of FIR, therefore, the applicant is not entitled for concession of bail and this bail application may be dismissed.

4. Learned Counsel for the complainant adopted the arguments made by the learned Prosecutor and further added that the applicant is involved a heinous crime of attempting to commit rape with a minor girl. She submitted that minor has narrated the story in her statements recorded under section 161 and 164 Cr.P.C. wherein she fully implicated the applicant. She further submitted that the WMLO report also confirms the same position and says that she found redness around the vagina of victim which confirmed the offence of attempt to commit zina. She therefore, prays that the appellant do not deserve any leniency therefore, this bail application may be dismissed.

5. I have heard the learned Counsel for the applicant, learned DPG, learned Counsel for the complainant as well as perused the material available on record.

6. Instant case was registered for an offence of attempt to commit zina wherein the applicant alleged to have attempted to commit zina with a minor girl aged 09 years. The statements under section 161 and 164 Cr.P.C. of the victim reveals that she has fully implicated the applicant in the offence which version is further strengthened by the report of WMLO while observing that during clinical examination, she noted slight redness around the vagina. Though offence itself is a heinous one but such attempt with a minor girl does not at all call for any leniency.

7. It is not out of context to mention here that sufficient material available on the record to connect the applicant with the offence. Perusal of the record reveals that the complainant and victim in their

statements before Police have fully implicated the applicant in the commission of crime. Minor contradictions pointed out by the learned counsel for the applicant cannot be taken into consideration at this stage as it is not the requirement of law to go into deeper appreciation of case. It is settled that for deciding the bail application, the Court has to observe tentative assessment and deeper appreciation of evidence is not required and it will not be fair to go into discussion about the merits of the case at this juncture. Thus taking a tentative assessment of the available record, the applicant being prima facie linked with the commission of the offence is held disentitled to the concession of bail. Resultantly, the instant bail application is dismissed.

8. Before parting with this order, it is directed that any observations recorded in this order, being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court where case be decided on its own merits.

JUDGE