

came at the police station where she lodged the above referred FIR. During course of investigation, police secured one cloth used by the accused persons during rape. Police also arrested the applicant and his another accomplice and on the next day i.e. 01.02.2021, identification parade was held before concerned Magistrate wherein complainant identified the accused persons. Complainant was examined by MLO and her vaginal swabs were secured. Both the accused persons were also medically examined and their blood samples were secured for chemical and DNA test. One piece of cloth secured by the police from the place of incident was also sent for chemical and DNA test. Chemical report was received wherein human sperms were detected from vaginal swabs of complainant. In the meanwhile, DNA report was also received which showed that mixture of two individuals were found from the white piece of cloth recovered from the place of incident and it was reported that DNA profile of applicant as well as his accomplice could be excluded as potential contributor to the DNA from the sperm fractions of white piece of cloth. After completing the investigation both the accused were challaned.

3. Applicant applied for post arrest bail before learned trial Court twice but the same was declined, hence he has approached this Court for the same relief.

4. Learned counsel for the applicant, *inter alia*, contends that applicant is innocent and has been falsely implicated in the instant case; that FIR was lodged against unknown persons; that there is inordinate delay in lodging of the FIR; that according to report, DNA report is also negative; that nothing was recovered from the possession of the applicant; that no role was assigned to the applicant in the identification parade; that no independent person from the locality was arrayed as witness; that applicant is not previously involved in any criminal activity; that investigation is completed; that applicant is behind the bars since the date of his arrest. He lastly submitted that case of applicant requires further inquiry into his guilt. In support of his contentions he has relied upon the cases reported as **Jahanzeb and others vs. The State (2021 SCMR 63)**,

Kamal Din alias Kamala vs. The State (2018 SCMR 577), Irsalan Zohaib vs. The State (2016 SCMR 1217), Jamshaid Asmat alias Shheedu vs. The State (2011 SCMR 1405).

5. In contra, learned Deputy Prosecutor General Sindh opposed this bail application on the ground that applicant and others had committed rape with her and she identified them in identification parade while describing their roles, which was conducted on the very next day; that as per medical report human sperms were found from the cloth secured from the place of incident; that according to DNA report the profile of two individuals were found; that plausible explanation has been furnished for the delay in lodging of the FIR; that the offence is heinous in nature, therefore, he prayed for dismissal of the instant bail application. Complainant also appeared in person before the Court and prayed for dismissal of the instant bail application.

6. Heard and perused the record.

7. It is evident from the record that no enmity has been alleged between the parties and there appears no malafide on the part of complainant/ victim in lodging the FIR as the same was against unknown accused persons. The matter was reported to the police by the victim/ complainant with reasonable promptitude. The occurrence in the case had taken place on 07.01.2021 at 2030 to 2200 hours, whereas the FIR was registered on 08.01.2021 at 1840 hours. This immediate and spontaneous reporting of the matter by the prosecutrix rules out any chance of manipulation of the narrative of the FIR. The applicant and co-accused were arrested on 31.01.2021 and on the very next day i.e. 01.02.2021, their identification parade was conducted before the Magistrate through victim / complainant who rightly identified the accused including applicant as one of the accused of the commission of the offence with a role played by him. With regard to the contention of learned counsel for the applicant that DNA report is also negative, therefore, this ground alone makes the case of the applicant of further inquiry into his guilt, at the very outset it is well settled that DNA testing

is not the requirement of law and in order to constitute the sexual intercourse necessary to the offence of rape, penetration is sufficient. Even otherwise, the effect of the DNA report will be considered during the trial after evaluating the evidence produced by the parties. In the present case, the complainant has specifically stated in the FIR regarding commission of house robbery as well as gang rape and she also identified him in the identification parade with specific role. The offences with which the applicant is charged, are heinous in nature and the offence of gang rape carries punishment of death or imprisonment for life. It is well proposition of law that mere statement of victim alone in a rape case, would be sufficient to connect accused with commission of offence, if the statement of victim inspires confidence and no ulterior motive and malafide has been spelt out from the averments of FIR supported with other iota of evidence collected by the prosecution. Reliance is placed on the case of **Mushtaq Ahmed and another v. The State (2007 SCMR 473)**.

8. However, while dealing with the bail matters, deeper appreciation is not warranted as it may prejudice the case of either side, rather the Court should adhere to tentative assessment of the material brought before it. Prima facie, in my opinion, at this stage no case for grant of bail to the applicant is made out. The case law relied upon by learned counsel for the applicant is on different footing, even otherwise, the precedents in bail matters are of no help to a party, as it varies from case to case depending upon the facts of each case.

9. In the mentioned circumstances, I do not find the applicant/accused entitled for bail at this stage of case. Accordingly, the bail plea is hereby dismissed. However, while parting the trial Court is directed to conclude the trial within a period of six months.

J U D G E