

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 2372 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>14th June, 2022</u>	

For hearing of bail application.

14th June, 2022

Raja Rashid Ali, Advocate a/w applicant (Muhammad Rafique @ Babu).
Ms. Amna Usman, Advocate for complainant.
Mr. Talib Ali Memon, APG a/w SIP Ghazanfar Ali, I.O. of the case.

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Omar Sial, J: On 26.09.2021, Rahima Bengali went to the doc's police station in Karachi and provided information of an incident that had occurred the previous day. 25.09.2021. Rahima recorded that on 25.09.2021 she had taken both her husband and son to the civil hospital as they were unwell. Her daughter Zara aged about 12 or 13 years remained alone at home when Rahima returned from the hospital she saw that the door of the house was opened and Zara was not at home. She suspected that Abdullah, son of Noor Alam, Ilyas, son of Abdul Qalam and the applicant, Muhammad Rafique alia Babu (applicant) had kidnapped Zara with the intention to commit zina. Upon the information provided by Rahima, FIR No. 767 of 2021 was registered under sections 365-B and 34 P.P.C. at Docks police station.

3. It appears that at some stage, the date of which is unclear from the record, Zara herself returned home. What is clear, however, that she had returned home before 30.09.2021, as that is the date when she recorded a statement under section 164 Cr.P.C before the learned XXVth Civil Judge and Judicial Magistrate Karachi West. It is pertinent to mention that the statement recorded by Zara refers to a letter dated 21.09.2021 written by the District and Sessions Judge Karachi West which directs the learned Magistrate to record her statement. What is unexplained, however, is that though the photograph on the statement is ostensibly that of Zara her name annexed on the note by the learned Magistrate refers to her as Iqra. This is an aspect which the learned Magistrate will have to clarify at trial as neither is the victim's name Iqra nor do the facts of the case reflect that she had returned home prior to 21.09.2021. Be that as it may what has been narrated in her

statement which ostensibly has been recorded in the handwriting of the learned Magistrate and which statement forms the basis of the nomination of the three accused records as follows. Zara stated that it was 23.09.2021 (although the complainant in the FIR has recorded her date of disappearance as 25.09.2021) that she was on her way to her maternal grandmother's house when Ilyas driving a rickshaw followed her. Ilyas asked her to sit in his rickshaw and upon her declining to do so showed her a pistol and forcibly made her sit in his rickshaw. Ilyas took her to his sister in law's house which was empty. There he raped Zara. Ilyas then phoned Abdullah and asked him to come to the same house. Once Abdullah reached the house Ilyas left. Abdullah then took her in Ilyas's rickshaw to one of his friend's house where he also raped her. She was then locked up in the house for the night. Abdullah also spent the night there. The next day Abdullah called the applicant who also arrived at the house and took her in the same rickshaw to a farm house where he also raped her. While she was with the applicant someone called Rafique who he was referring to as Bhabhi and after he had hung up he told Zara that the police has arrested Abdullah. He then asked her to sit in his rickshaw so that he could drop her home. Rafique dropped her off close to her house. As she was crossing Abdullah's house, she saw that the door was open and his older sister came out crying and asked Zara to come in. Inside the house Abdullahs mother was also present who started pleading with Zara to forgive her son. Abdullah's brother then brought Zara to the police station.

4. Abdullah and Ilyas were subsequently apprehended and produced before the police by Rahima and her brother, Bilal.

5. I have heard the learned counsels for the applicant, the complainant as well as the learned APG and with their assistance have gone through the record. My observations are as follows.

6. On 27.09.2021, Zara was medically examined when vaginal swabs were taken and sent for DNA. Her clothes which she was wearing when she was raped three times were also sent for DNA analysis. The Sindh Forensic and Serology Laboratory in its report dated 26.9.2021 concluded that no semen remains were either found from the vaginal swabs or from the clothes. The medical certificate issued by the MLO evidences that the doctor found no marks of sexual assault on either her body or vagina. No swelling, bleeding or tenderness was found on her vagina. The medical report also showed that the

clothes she had worn to the doctor were the same clothes that she was wearing at the time of the incident. Neither were any marks seen on the body. Keeping in view Zara's version that she was raped three times prima facie the medical reports do not reconcile with her ocular version. The police in its investigation had also concluded that FIR should be disposed of in C class.

7. Grounds for allowing bail:

- i. Mother had reported in the FIR that Zara had gone missing on the 25.09.2021 whereas according to Zara she had been kidnapped on the 23rd. The story as narrated by her in section 164 statement prima facie does not sound convincing.
- ii. If the FIR version is to be believed Zara was medically examined. The very next day after she returned that is on 27.09.2021. It also appears from the record that she had not changed her clothes at the time of her medical examination. Prima facie it appears unusual keeping in view the story she had narrated that no semen was detected either on the vaginal swab or the clothes she had worn. Even though it appears from the record that the clothes were used to clean the semen on the ground. While it is possible that a rape could occur without any sign of violence on the body yet the report of the vaginal examination does not reconcile with the ocular version given by Zara. While the complainant had stated in the FIR that she had gone to the police station to lodge the FIR. Her version was that the co-accused Abdullah's brother had brought her to the police station. The only evidence available in this case appears to be the sole testimony of the victim. However, for the reasons given above, upon a tentative assessment it appears that her testimony requires further inquiry.

8. In view of the above, applicant is admitted to bail subject to his furnishing a solvent surety in the sum of Rs. 500,000 and a PR Bond in the like amount to the satisfaction of the learned trial court.

JUDGE