

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 1607 of 2020

Date order with signature of Judge

For hearing of bail application.

17th December, 2020

Mr. Rasheed Ashraf Mughal, Advocate for applicant.

Mr. Faheem Hussain Panhwar, DPG a/w PI Saghir Ahmed, I.O. of the case.

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Omar Sial, J: Khushi Mohammad has sought post arrest bail in crime number 580 of 2020 registered under section 376 and 34 P.P.C. at the Shah Latif police station. Earlier, his application seeking bail was dismissed on 3-7-2020 by the learned 5th Additional Sessions Judge, Malir.

2. A background to the case is that the aforementioned F.I.R. was lodged by Mir Murtaza Shoro on 13-6-2020 providing information of an offence that had occurred the previous day i.e. 12-6-2020. He recorded therein that his 8 year old daughter Samreen who is of unsound mind had gone to the landlord's house on the ground floor of the dwelling in which they live. When Samreen returned home, her mother saw that Samreen was not in good condition and that her shalwar was stained with blood. Samreen however through gestures managed to explain to her parents that the landlord's son, the applicant, had raped her. A medical test was done which found the little girl to have been subjected to intercourse.

3. I have heard the learned counsel for the applicant as well as the learned APG. The complainant family was present however all precautions were taken to keep the little victim away from the eyes of the public and other counsels.

4. Learned counsel has argued that there is no evidence that the rape occurred; that the blood stained shalwar of the little girl was not seized; that a DNA test was not done; that the complainant has sworn an affidavit that he has forgiven the applicant.

5. I have given considerable thought to the arguments of the learned counsel. The only evidence in this case is what the little girl has told her parents. This case has been weakened solely because of the extreme poverty of the complainant family as well as the absolutely hopeless and miserable investigation conducted by the investigating officer. The investigating officer, who has now retired, was also summoned to inquire about his investigation. Most sadly, it was obvious that the said investigating officer had completely violated his responsibilities. A weak or as in this case, no investigation conducted by the investigating officer, should not go against the victim.

6. At this preliminary stage I am also not inclined to conclude that the affidavit sworn by the complainant has been sworn at his freewill. Upon a tentative assessment I have no reason to doubt what the 8 year old has told her parents. There was no reason for her or her parents to wrongly accuse the applicant. Trauma is written all over the face of the child. Medical examination, conducted the very next day after the incident, has concluded that the girl has been recently violated.

7. While the authenticity or otherwise of the allegations will have to be proved at trial, prima facie, the applicant does have a case to answer. I am also apprehensive that if released on bail the applicant can pressurize the family to abandon the case. I am also apprehensive that the applicant may repeat his behaviour.

8. The offence with which the applicant is charged falls within the prohibitory clause of section 497 Cr.P.C., and in view of the above, I am not convinced that a case of further inquiry has been made out.

9. The application stands dismissed. The learned trial court is however directed, subject to its workload, to try and expeditiously conclude this case, preferably within a period of 4 months.

JUDGE