

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 123 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

08-02-2023

Mr. Maqbool Rehman, Advocate for applicant.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: The applicant Abdul Hafeez alia Aagino has sought post arrest bail in crime number 756 of 2022 registered under sections 377, 377-B and 511 P.P.C. at the Steel Town police station. Earlier, his application seeking bail was dismissed on 14.01.2023 by the learned 5th Sessions Judge, Malir, Karachi.

2. It is alleged by Abdul Ghafoor, that the applicant attempted to sodomize his 4 year old son but that he could not carry out the act as Abdul Ghafoor and some others reached the place where the child was taken. The child told his father that the applicant had disrobed and then molested him.

3. The learned counsel for the applicant argued that during trial discrepancies had arisen between witness statements on the exact location where the offence is said to have been committed; that such an incident did not happen and that the medical report also does not corroborate the ocular version. He lastly argued that the false allegation has been made because the complainant and the applicant had a dispute over property. To the contrary, the learned Assistant Prosecutor General, passionately, endorsed the order impugned and pointed out that an offence punishable under section 377-B carries a harsher sentence for sexual abuse than that of one under section 377 P.P.C., which even if halved pursuant to section 511 P.P.C. would still make the offence fall within the prohibitory clause of section 497 Cr.P.C. None appeared on behalf of the complainant however the learned counsel for the applicant submitted that the complainant had forgiven the applicant.

4. I have heard the learned counsel for the applicant and the learned APG. My observation and findings are as follows.

5. I do not see any reason for a false implication. The learned counsel, though arguing that a land dispute was the reason behind the case, expressed his inability to show even remote details of the supposed dispute. He was unable to tell the court as to what was the dispute and as a matter of fact where was the land situated on which the dispute had arisen. Learned counsel's reliance on testimonies recorded at trial would tantamount to deeper appreciation of evidence and therefore it will not be appropriate at this stage to dwell into and analyze the prosecution witness testimonies recorded at trial. It will be the learned trial court which will be in the best position to evaluate the evidence and announce its findings thereon.

6. An offence under section 377 P.P.C. carries a potential sentence of 2 to 10 years whereas an offence under section 377-A P.P.C. carries a potential sentence of 14 to 20 years and a fine of Rs. 1 million. It is an admitted position that an offence under section 377 P.P.C. was not completed therefore the punishment would be under section 511 P.P.C. At this stage however it cannot be said with certainty that an offence under section 377-A was not complete. The punishment that the applicant could possibly face for the offences with which he is charged will fall within the prohibitory clause of section 497 Cr.P.C. Medical reports on record show that an attempt to sodomize may have been made; however, this is a case where medical evidence may not be as important as the eye witness testimonies.

7. Child sexual abuse is usually a recurring pattern for a person who indulges in it. It may be safer for the society at large that the applicant stays in custody until such time as the learned trial court has had an opportunity to evaluate the evidence and render a judgment.

8. For the above reasons, the bail application stands dismissed.

JUDGE