

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Bail Appln: No.S-1249 of 2022

---

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

---

For orders on office objection  
For hearing of main case

**07.04.2023**

Mr. Gada Hussain advocate along with applicant.  
Ms. Shahnaz Buriro advocate for the complainant.  
Ms. Sana Memon, A.P.G. for the State along with I.O/ASI Ghulam  
Muhammad Solangi PS Women, Hyderabad.

-----

**MUHAMMAD IQBAL KALHORO,J-** As per F.I.R registered on 23.09.2022 at 1800 hours with Police Station Pinyari, on 26.08.2022 son of complainant namely Murtaza Ali aged about eight years went outside of his house after Isha prayer to purchase something and when he did not return after 20 minutes, she came outside and heard noises coming from the house of applicant Mushtaque barbar. One Raju Qaimkhani was standing in the street, she along with the said witness entered the house of applicant where he was seen committing a lucid act with his son: he had inserted his penis in the mouth of his son. Complainant party beat the applicant and saved the boy.

She subsequently filed an application for registration of F.I.R and got a letter on 29.09.2022 for medical examination of his boy. The medical report is in negative. The F.I.R was registered on 23.09.2022 after delay of about 27 days. The report of DNA samples have also come in negative. The only witness cited in F.I.R namely Raju Qaimkhani in his 161 Cr.P.C statement has denied the incident. Investigating Officer present submits that in the investigation, the applicant was found innocent as no tangible evidence was offered by the complainant except her own statement. Further, he has thoroughly investigated the matter and has disposed of the case under 'C' class, which however was not agreed by the learned Magistrate and he took cognizance of the offence against applicant. He has also informed that there was already a dispute between the parties over children and the complainant had sent a proposal of her son for the daughter of the applicant, which was not accepted by him.

In any case, learned counsel for the complainant and Assistant P.G have opposed bail to the applicant stating that applicant's name is mentioned in F.I.R. The investigating officer has not properly conducted the investigation and the child himself was presented in the Court and his 164, Cr.P.C. statement was recorded, in which he has supported the case.

I have heard the parties and perused the material available on record. Prima facie, there is no medical evidence to support the allegations against applicant. This could be a result of late registration of F.I.R, but in any case before the Court apparently there is no medical record connecting the applicant with the offence. The only independent witness cited in the F.I.R has backed out and in his 161, Cr.P.C. statement has denied happening of such incident in his presence. The I.O. has informed that applicant is living in the subject house with his family and not alone, therefore, probability of commission of offence there is very low almost non-existent. These factors show that the case against applicant requires further inquiry. The existences of dispute between the parties before registration of F.I.R. is sufficient to show that F.I.R could be a result of malafide on the part of the complainant. Therefore, in my view the applicant has succeeded in making out a case for pre-arrest bail particularly when the investigating officer in Court has categorically stated that custody of the applicant is not required by him. Resultantly, this bail application is allowed and the ad-interim pre-arrest bail granted to the applicant / accused is hereby confirmed on the same terms and conditions.

The bail application is disposed of accordingly.

**JUDGE**