

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2808 of 2021

Date	Order with signature of Judge
For hearing of bail application	

20.12.2023

Mr. Aziz Ahmed Shar advocate for the applicant
Syed Meeral Shah Bukhari, Additional PG alongwith Inspector Anila Qadir SSO IU Unit Incharge
Complainant Muhammad Ilyas present in person

Through this Criminal Bail Application, applicant Syed Farjad Ali seeks post-arrest bail in Crime No.533/2023, registered under Section 376 PPC at PS Khawaja Ajmer Nagri Karachi. Earlier his bail plea was declined vide order dated 28.11.2023 passed by learned II-Additional Sessions Judge Karachi Central in Bail Application No. 2946 of 2023 on the premise that the name and specific role of the applicant is mentioned in FIR, even in 164 Cr. P.C. statement, the victim whose age is just 14 years, fully implicated the applicant before learned Judicial Magistrate.

2. Learned counsel for the applicant submits that the applicant/accused as well as the complainant of this case has settled their differences outside the Court upon the intervention of their elders. He next submits that the complainant of this case is present and intends to file his affidavit of no objection. He, therefore, submits that in view of the statement of the complainant, the case against the applicant requires further inquiry.

3. Learned Additional PG has submitted that the Trial Court may be directed to record the statement of the victim so that the truth may come out as this is not the stage to accept the plea of the complainant. The learned APG has submitted that the name and specific role of the accused person is mentioned in FIR, even in 164 Cr. P.C. statement the victim whose age is just 14 years, fully implicated the accused person and deposed against the accused person before learned Judicial Magistrate. He added that so far the ground agitated by learned defense counsel is concerned that 161 Cr. P.C. statements of some of the PWs does not support the prosecution version as well as the victim, the said ground has no weight as it is a well-settled principle of law that deeper appreciation is not allowed while deciding the bail application. However, prima facie sufficient material available on record which connects the accused with the commission of present crime. He further submitted that the complainant and victim are private witnesses so there is apprehension of tempering with the witnesses if the accused is granted bail before recording their evidence.

4. Inspector Anila Qadir SSO IU Unit Incharge is present in court and submits that to date no concrete evidence has been brought on record against the applicant. Complainant Muhammad Ilyas is present in person and categorically stated that he has no objection to the grant of bail to the accused.

5. Tentative assessment of the record reflects that vaginal swab of Mst. Khekashan (victim) were obtained and sent for forensic DNA and Seriology report, which explicitly show the following aspects of the case:-

“Results and Conclusion:

No seminal material was identified on vaginal swab of Khekashan d/o Muhammad Ilyas. Therefore, no further DNA analysis (STR analysis) was performed on item#1.

No seminal material was identified on stain sections taken from shalwar (item#2.1) and qameez (item#3.1) of Khekashan d/o Muhammad Ilyas. Therefore, no further DNA analysis (STR analysis) was performed on item# 2.1 and 3.1.

No seminal material was detected on stain sections taken from shalwar (item# 2.2 2.30) and qameez (item# 3.2 3.20) of Khekashan d/o Muhammad Ilyas. Therefore, no further DNA analysis (STR analysis) was performed on item# 2.2. 2.30 and 3.2 3.20.

No analysis was conducted on blood sample of Khekashan d/o Muhammad Ilyas (item# VI)

No analysis was conducted on blood sample of Syed Farjad Ali s/o Syed Anwar ali (item#SI)

6. As per DNA report no semen was observed on the shalwar qameez of Mst. Khekashan. The ocular evidence does not find support from the DNA analysis hence the case of the applicant becomes a case of further inquiry in terms of law laid down by the Supreme Court in the cases of *Fahad Hussain v The State* (2023 SCMR 364) and *Jehanzeb v The State* (2021 SCMR 63).

7. In the circumstances and in view of the above factual position of the case the applicant has succeeded to make out a case for further inquiry as envisaged under Section 497(2) Cr. P.C, consequently, the instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs.100, 000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of the learned trial Court. The observation is tentative and will not prejudice the case of the parties at trial. The Trial Court shall examine the victim within one month's positively.

JUDGE