

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. B.A. No. 1206 of 2023

Cr. B.A. No.1211 of 2023

Date	Order with signature of Judge
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For hearing of bail application.

31.07.2023

Mr. Raham Ali Rind, Advocate for applicants in Cr. B.A No1211/2023
Ms. Farzana Abbasi, Advocate for applicants in Cr. B.A. No.1206/2023.
Mr. Gh. Mustafa Hinghorjo, Advocate.
Mr. Zafar Ahmed Khan, Addl. P.G.

1. Through the present bail applications, the applicants seek post arrest bail in Crime No.117/2023 registered al Police Station Bin Qasim for offences under Sections 371-A and 371-B, P.P.C. The present bail applications were heard together and are being determined by this common order.

2. The allegations against the applicants are that on 31.03.2023 at 09:00 p.m. they were found in selling and purchasing person for the purpose of prostitution.

3. Learned counsel contended that the offence took place in a thickly populated area, however, no private mashir was associated as witness which is violation of Section 103, Cr.P.C. He further stated that no warrants were taken for conducting the said raid in a household which is protected by law.

5. Learned Additional Prosecutor General opposed the instant application by stating that the applicants failed to show any enmity with police and raised question about the presence of a stranger man

in the house. He next stated that the offences fall within prohibitory clause of Section 497, Cr.P.C.

6. Heard the counsel for the applicants, the learned Addl P.G. and perused the material available on record.

7. As per the contents of the FIR, spy information reached to police and on this basis the residence of the applicants was raided. Admittedly, sufficient time was available to police to arrange private mashirs, and the area being thickly populated, mashirs may have been easily taken from the place of incident, for which no effort has been made. The Constitution of Islamic Republic of Pakistan, 1973 through Article 34 protects the unity of a family and does not expose them to any intervention from outsiders. The very ingredient of Sections 371-A and 371-B, P.P.C. is that there has to be an intention that the person would be used for the purpose of prostitution or illicit intercourse. On perusal of the record, I did not find any written complaint from the public or any oral statement of any independent person of the locality recorded by the complainant to support his version. Nobody from the locality has been associated with the alleged raid proceedings spy information, so much so that landlord of the house has not been examined who runs a clinic at the first floor of the same house. Similarly, none from surrounding houses has been examined by the complainant in support of his version. No material evidence is available to show that applicants are involved in buying and selling person for the purpose of prostitution, therefore, in the circumstances, application of sections 371-A and 371-B, P.P.C. is a matter which requires further probe. Provisions of Sections 371-A and 371-B, P.P.C. only apply to persons who sell or purchase any person with the intent that such person would be used for the purpose of

prostitution or illicit intercourse. Neither any search warrant has been obtained nor any notables of the locality has been associated with the alleged. No doubt, the evidence of police officials is as good as private persons but here in this case when the availability of private persons is not denied at the place of arrest and recovery, therefore, the non-joining of private person to witness the event, creates doubt. In the circumstance the alleged raid cannot be termed any better than an intrusion, which is an act prohibited by the Constitution, law and the Holy Quran. The Legislature in their wisdom, having regard to the existing norms of the society, were conscious of the fact that if cases under such offences are permitted to be registered on spy information or even on the complaints lodged by anonymous persons, such practice would encourage false reports involving innocent men or women for ill designs. Learned Addl.PG has argued that offence, under which the applicants have been booked falls within prohibitory clause of Section 497, Cr.P.C., therefore, on this ground applicants are not entitled for bail. Reverting to these contentions, it suffices to say that, there is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed such offences, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can be offered to an innocent man/woman for his/her unjustified incarceration at any stage of the case albeit his acquittal in the long run. The prosecution has the uphill task to prove that in premises where female were present with their brother, husband and father-in-law, they indulged in the act of

offering their body for promiscuous sexual intercourse for hire to persons who hardly have any reasonable sums in their pockets.

8. Perusal of the FIR also shows that personal search of ladies accused in this case did not show recovery of any monies. Under these circumstances, in my tentative view many aspects of the case require further probe. It is settled law of the criminal justice that every accused should be presumed as innocent until and unless he/she is found guilty of the alleged charge. It is also settled law that if any doubt is created in prosecution case, its benefit must be extended to the accused, even at bail stage.

9. In my tentative view, police has involved the applicants without any iota of evidence, by violating the statutory provisions of law, also encroached the fundamental right of the petitioner and others guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan, 1973, providing that the dignity of man and subject to law the privacy of home is inviolable. Such fundamental rights are whenever violated and complained of, the court must step into and investigate under constitutional jurisdiction to pass such order as may be found just, legal and equitable. Human dignity, honour and respect is more important than physical comforts and necessities and no attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life and more particularly on the part of the police officials, who are otherwise bound to protect the rights of citizens, should be allowed to go with immunity.

10. While at the stage of the bail, no deeper appreciation of the fact is permissible, but at the face of it, in my humble view, the case

required further inquiry into the guilt of the accused persons, and for such reasons, I was inclined to exercise the discretion of bail in favour of the applicants and allowed the their such application through my short order dated 24.07.2023 by each one of them furnishing a bail bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the trial court. These are the reasons of the said order.

JUDGE

Aadil Arab