

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S – 345 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

Hearing of bail application

1. For orders on office objection at Flag 'A'
2. For hearing of bail application

28.08.2023

Mr. Achar Khan Gabol, Advocate along with Applicants
Mr. Ali Ahmed Khan, Advocate along with Complainant
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State
along with SIP Pir Bux Bhutto, Investigating Officer, Police Station,
Mirpur Mathelo

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ORDER

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MUHAMMAD IQBAL KALHORO, J.- As per FIR, registered on 29.04.2023 after one day of the alleged incident, a daughter of complainant namely Aiman aged about 14/15 years in response to a knock on outer door at about 11:00 pm went there to see the caller but did not return. Complainant with her husband mounted a search for her but in vain. On the next day, she received information that her daughter was lying unconscious near railway line. They went there and brought her at home. She after gaining senses revealed about applicants, the callers, taking her forcibly on a cycle to an abandoned place, where they and an unidentified accused committed zina with her turn by turn. This information was given to the police immediately and then she was produced before the Woman Medical Officer for examination under the police docket.

2. Learned counsel for the applicants submits that there is delay of one day in registration of FIR; complainant is habitual in registering the same kind of the cases; that previously she had registered an FIR No.64/2018 under Sections 377 and 511 PPC alleging commission of rape with her son; and that against her husband an application under Section 22-A-6(i) Cr.P.C

was filed by her neighbourer Mst. Jameelan leveling allegations of same nature; that the medical report is in negative, which shows that no rape was committed to her; that the report in respect of vaginal swabs is negative and the DNA of swabs of the victim too is negative, hence, the case is one of further inquiry. In support of his contentions, he has relied upon the cases of ***Abdul Ghaffar v. The State and others (2016 SCMR 1523)*** and ***Muhammad Tanvir v. The State and others (2017 SCMR 366)***.

3. Learned counsel for the complainant, DPG for the State and Investigating Officer of the case have opposed grant of bail to the applicants.

4. I have considered submissions of the parties and perused material available on record and taken guidance from the case law cited at bar. The FIR was registered on the same day when the minor girl was found lying unconscious at an abandoned place, and is based on her version of the events. The applicants have been saddled with committing rape with her. Initial medical examination of the victim, who is hardly 14/15 years, reveals that she was not found virgin and there were swellings on different parts of her vagina, besides an injury mark on her neck. These initial findings recorded by Lady Medical Officer show firstly that she was used for sex and secondly was not willing party to it. The allegations against the applicants are serious in nature and are *prima facie* supported by first medical examination of the victim. The impact of negative DNA report *etc.* can only be determined at the stage of trial and not here and at bail stage it cannot be given preference over the oral account furnished by the victim. No doubt learned counsel in defence has produced a copy of FIR registered by complainant against another person for rapping her son but so far as the applicants are concerned, nothing has been brought on record to show any *mala fide* on her part to falsely implicate them in this case.

5. It goes without saying that in the offences of nature as this one, people hardly come forward to report the matter to police as they feel it

undermining their honour. But in this case, not only the matter has been reported promptly, but the applicants have been named by victim herself to be assailants. Therefore, applicants' request for pre-arrest bail in such case is not sustainable, and they are not entitled to the extra ordinary concession of pre-arrest bail, which is meant to save innocent persons from arrest in non-bailable offences, in which they have been apparently falsely implicated. Therefore, **this bail application is dismissed** and the interim pre-arrest bail already granted to the applicants vide order dated 26.05.2023, is hereby recalled. The case law relied upon by learned defence counsel are distinguishable and not applicable in this case.

6. The observations made herein above are tentative in nature and will not prejudice the case of either party at the trial.

Judge

ARBROHI