

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 326 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
Applicant:	Muhammad Faheemuddin son of Sirajuddin, through Mr. Aziz Ahmed Leghari, Advocate.
The State:	Through Ms. Seema Zaidi, Addl. Prosecutor General, Sindh.
Complainant:	Muhammad Tariq son of Ghulam Rasool Gul, through M/s. Riaz Ahmed Bhatti & Allah Ditta, Advocates.
Date of hearing:	30.05.2024.
Date of order:	30.05.2024.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, applicant Muhammad Faheemuddin seeks his release on post arrest bail in Crime No.441 of 2023 of P.S Steel Town, Karachi, under Sections 377, 511 & 337-B PPC. The case has been challaned by the police which is now pending for trial before the Court of 5th Addl. Sessions Judge, Malir Karachi vide Sessions Case No.2160 of 2023 (re-the State Versus Muhammad Faheemuddin). The applicant filed two successive bail applications before the Court of Addl. Sessions Judge-V, Malir Karachi; however, could not succeed by way of orders dated 04.09.2023 and 07.10.2023; hence, instant bail application has been maintained.

2. Since the facts of the prosecution case are already mentioned in the FIR, which is annexed with the Court file, therefore, there is no need to reproduce the same.

3. Learned counsel for the applicant submits that the offence is un-witnessed one and mere attempt was alleged against the applicant which is yet to be established by the prosecution after recording evidence of its witnesses. He next submits that alleged victim boy was referred to

Medico Legal Officer where no injury or scratch has been found on his person, therefore, case against applicant requires further inquiry. He further submits that per memo of place of incident dated 11.03.2023, no washroom, as alleged under the FIR, was found available inside shop. In support of his contention, learned counsel places reliance upon the case of *SOHAIL AKHTAR Versus The STATE through P.G. Punjab and another* (2022 SCMR 1447).

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application on the ground that all the PWs have supported case of prosecution; besides, victim boy was examined before the Judicial Magistrate under Section 164 Cr.P.C; whereby he had supported the case of prosecution, therefore, application in hand, merits no consideration; hence, it may be dismissed.

5. Learned counsel for the complainant also opposes the bail application on the ground that mere non-availability of medical evidence, is no ground for grant of bail as the applicant allegedly had taken off the clothes of victim boy but upon arrival of a customer over the shop's counter, the victim tried to rush to the washroom of his shop looking at an opportunity to escape, the victim took a chance to decamp from the scene and saved himself. In support of his contention, learned counsel place reliance upon the case of *ZAHID Versus The STATE* (2022 SCMR 50).

6. **Heard arguments, record perused.** Admittedly, the FIR is delayed for about one day for which no plausible explanation has been furnished by the prosecution, which shows that FIR was registered with due deliberation and consultation. Though the place of incident is surrounded by many residential houses as well as shops but non of them was made as a witness nor anyone was attracted with hue and cry allegedly made by the victim. Per medico legal report, no single injury or scratch has been found upon the body of victim boy and mere allegation of removing his clothes, which in view of available material, carries no weight more particularly when the boy had not disclosed this fact to his father nor it is mentioned under the FIR or in his 164 Cr.P.C statement to the effect that after getting sheltered by the accused in the washroom how he (the victim boy) put his clothes on

himself and then decamped from the scene of offence. It is settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

7. In the circumstances and in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of Sohail Akhtar (Supra), case against applicant requires further inquiry within meaning of subsection (2) to section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. Applicant **Muhammad Faheemuddin son of Sirajuddin**, 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 learned trial Court.

8. It may be pertinent to mention here that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, if the applicant is found misusing the concession of bail, learned trial Court may proceed against him.

9. This Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A