

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.2574 of 2023

Date Order with signature of Judge

For hearing of bail application

Date of hearing and Order:-03.7.2024

Mr. Tahir Khan advocate for the applicant alongwith applicant Arshan
Shah Imroze Khan advocate for the complainant alongwith complainant
Muhammad Ashraf
Mr. Muntazir Mehdi, Additional PG

Adnan-ul-Karim Memon, J. – The applicant Arshan has approached this Court for a grant of pre-arrest bail in FIR No. 1535 of 2023 registered for offenses under Section 376/109 PPC of PS Karachi Industrial Area, Karachi (KIA).

2. His earlier bail plea has been declined by the trial Court vide order 11.11.2023, on the premise that the applicant was/is prima facie involved in committing the rape of the victim girl Sania and the offense under section 376, P.P.C. is punishable with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years offense thus does fall within the prohibitory clause of Section 497 (1) Cr. PC.

3. The main allegation of prosecution against the applicant is that he allegedly committed rape of the victim lady Sania and later promised to enter into Nikkah with her; however, finally, he refused and due to said relationship victim has also given birth to a baby boy namely Muhammad Ali aged about six months. After the registration of the case on 25.10.2023, the applicant obtained bail before arrest from the trial court which was later recalled, and again the applicant succeeded in obtaining ad interim bail from this court vide order dated 13.11.2023.

4. By all means, the applicant has to satisfy the Court regarding the basic conditions enumerated under Section 498 of the Code of Criminal Procedure, 1898 as no specific details of mala fide intention are shown on the part of the complainant and victim to book the applicant in rape case. On the subject law point, the Supreme Court is clear and held in the case of *Rana Abdul Khaliq Vs. State (2019 SCMR 1129)*, that the accused seeking judicial protection is required to reasonably demonstrate that his intended arrest is calculated to humiliate him with taints of mala fide.

5. Learned counsel for the applicant submits that applicant Arshan is ready to accept the victim as his wife and therefore, he has filed a Suit for

Restitution of Conjugal Rights before the Court of XXIII Family Judge, Karachi (East) vide Family Suit No. 1535 of 2023 (*re-Arshan v Sania*). Learned counsel has relied upon a Photostat copy of the birth certificate of the child namely Muhammad Ali and argued that there is a delay of about one year in lodging the F.I.R. As such the applicant cannot be saddled with the alleged rape as portrayed by the victim. Learned counsel for the applicant seeks confirmation of the applicant's bail by arguing that the State shall protect the marriage, family, mother, and child, as nothing is an offense that is done by any person in good faith. He argued that contracting a verbal marriage by a Muslim with a pubert girl under Muhammadan Law is permissible, as such, the applicant has committed no offense, and the applicant has been falsely implicated in this case with mala-fide by the complainant/father of the alleged victim girl Sania being unhappy on account of her daughter's verbal marriage with the applicant; that victim girl did not implicate the applicant in her statements recorded under Section 161 and 164 Cr. P.C. for the commission of the offense.

6. While opposing the above said contentions, learned Additional PG assisted by learned counsel for the complainant argued that the applicant had committed rape with Mst Sania; the victim girl implicated the applicant in her statements recorded under Section 161 and 164 Cr. P.C. for the commission of the offense, in which he has been booked and the offense is punishable with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years offense thus does fall within the prohibitory clause of Section 497 (1) Cr. PC. He further contends that the defense plea of the applicant that there was the consent of the victim is liable to be rejected because the applicant falsely claimed oral marriage with the victim and filed a bogus case of conjugal right before the family court to save his skin though he was already married. Learned counsel for the complainant/ victim submits that the applicant is a deceiver and has committed a heinous offense, therefore he is not entitled to pre-arrest bail; at this stage victim girl present in court submits that the applicant had promised to enter into Nikkah with her, and such ceremony had also been scheduled but at the eleventh hour the applicant refused to abide by his commitment, therefore, she was disappointed and she objects about the grant of bail to the applicant at this stage, as he has done wrong with her and now her life and her child's life is in danger at the hands of the applicant if enlarged on bail.

7. I have heard the learned counsel for the parties and perused the record with their assistance.

8. The victim girl was a virgin lady and according to medical evidence she was subjected to sexual intercourse. She had recorded the 164 Cr. P.C. statement after registration of F.I.R. which was so delayed. However, the delay is of no help to the applicant at this stage as it has been repeatedly held by the Supreme Court that in such cases delay in lodging the FIR is immaterial as people naturally avoid rushing to the police because of family honor. There was no previous enmity between the parties and it is against common sense that the applicant prima facie concocted a story of verbal marriage and filed a Family Suit of Conjugal rights, which amounts to ruining her life. The offense falls under section 376, P.P.C., which is punishable with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and according to Schedule-II, Column No. 8 of the Criminal Procedure Code, it is triable by a Court of Session. As regards the plea of the applicant that he believed in good faith and with the consent of the victim did by contracting verbal marriage with her, this factum is denied by the victim girl present in court. Pima-facie his act on the part of the applicant was/is not justified by law. Even the argument of learned counsel for the petitioner seeking protection has failed to impress for the simple reason that the applicant had maneuvered alleged verbal marriage with the victim and now claims innocence, this factum needs to be taken care of by the trial Court by recording the statement of the victim girl within one month positively.

9. It is a well-settled principle that in a rape case, the solitary statement of the survivor victim is sufficient to form a tentative opinion. Upon a tentative assessment, and by looking into the ordeal of the victim and her family I am not inclined to endorse the viewpoint of the applicant at this stage for the simple reason that bail before arrest is meant to protect innocent citizens who have been involved in heinous offenses with mala fide and ulterior motives, however in the present case no such ground existed in favor of the applicant to show that there was a malafide intention or ulterior motive on the part of the complainant/victim to book the applicant in the rape case.

10. Without prejudice to the merits of the case which is pending adjudication in the Trial Court, I am of the tentative view that in the absence of any mala-fide or ill-will of the complainant, victim, or on the part of the police for his false involvement in this case, the applicant has failed to make out his case for confirmation of his ad-interim pre-arrest bail. Accordingly, the interim order dated 13.11.2023 passed by this Court

is hereby recalled and the applicant is directed to surrender before the Investigating Officer and face the trial, the security office to facilitate the applicant's surrender.

11. The observations made in this order shall not prejudice the case of either party on merits and the learned Trial Court shall decide the matter under the law within two months positively.

12. Above are the reasons assigned in support of my short order dated 3.7.2024.

JUDGE