

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No. 1427 of 2024

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Date	Order with signature of Judge
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For hearing of bail application

**Date of hearing and Order:- 11.7.2023**

Mr. Aroon Parsad advocate for the applicant  
Mr. Zahoor Shah, Additional PG along with SI Tauheed PS Mominabad  
and Investigating Officer Orangzaib of PS Mominabad  
Complainant Muhammad Khalid along with victim is present.

**ORDER**

**Adnan-ul-Karim Memon, J** :- Through this bail application under Section 497 Cr.P.C., the applicant Raheemullah has sought admission to post-arrest bail in F.I.R No. 262/2024, registered under Section 364-A, 377-B and 34 PPC at Police Station Mominabad.

2. The earlier bail plea of the applicant has been declined by the learned X Additional Sessions Judge (West) Karachi vide order dated 11.06.2024 in Cr. Bail Application No. 2497/2024 on the premise that the applicant is prima facie connected with the alleged crime, however, he opined that an FIR was lodged against unknown persons, and during the investigation, one accused Bahadur Khan was arrested who admitted his guilt and disclosed the name of the applicant with the allegation that they had committed the subject crime and based on his statement the applicant was arrested.

3. The case of the prosecution is that on 11.05.2024 the son of the complainant Khalid Ahmed did not come home, he traced him but failed to locate him thus he lodged FIR against an unknown person on 14.5.2024. The victim boy returned home voluntarily and his statement under Section 164 Cr.P.C. was recorded by the learned Judicial Magistrate on 3.6.2024, where he did not disclose the name of the applicant. During the investigation the investigation Officer produced the victim before MLO for his medical examination; who opined as:-

*“No mark of injury seen, all over body  
clothes changed parts washed, stool and urine passed  
due to lapse of time.  
Refer to on-call SU II for examination  
as per DOD SU II opinion on ER slip;  
on DRE: fummel sharped anal opening, tissue present  
present at 6 o'clock.  
increased anal tore. painful DRE.  
Swabs cannot be taken as parts have been washed and  
there is the lapse b/w incident and MLC.”*

***Opinion:- As per examination it is my opinion that some foul play has been done.***

4. Learned Additional PG, assisted by Sub-Inspector Tauheed and Investigating Officer Orangzaib of Police Station Mominabad as well as the complainant has opposed the bail application on the ground that there are no reasonable grounds exist to believe that it is a case of further inquiry as the victim has been subjected to an act of sodomy by several accused person including the present applicant.

5. I have heard learned counsel for the parties and perused the material available on record.

6. it appears from the record that 164 Cr. P.C. statement of the victim was recorded on 03.06.2024 whereas the alleged offense took place on 11.05.2024. the victim present in Court has narrated his ordeal however he is silent and does not say the name of the applicant, as no identification parade was conducted after the arrest of the applicant in the present case, therefore no opinion can be formed for and against the bail stage, even no DNA was conducted. In principle, DNA report requires deeper appreciation in terms of Section 156 (C) Cr.P.C. (Sindh Amendment Act), 2017 which reflects that in the case involved in the rape the DNA testing of the rape victim shall be mandatorily conducted by the police officer through the laboratories recognized by the government of Sindh and the fingerprint report received from the Sindh Forensic DNA Serology Laboratory is as positive. It is appropriate to reproduce the same hereunder:

***“156-C. Mandatory DNA Testing in Rape Cases. In the case involving the offense of rape- (a) the DNA testing of the rape victim shall be mandatorily conducted by a Police Officer through the Laboratories recognized by the Government of Sindh;***

7. The prosecution has failed to conduct the Deoxyribonucleic Acid (DNA) Test. DNA is a particle that encrypts the genetic information in all living beings and is the blueprint of an individual. It can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Generally, when the DNA profile of a sample found at the scene of a crime matches with DNA profile of the suspect, it can be concluded that both samples have the same biological origin so, in cases where a suspect is identified, a sample of that person's DNA can be compared to evidence collected from the crime scene. The results of this comparison may help establish that the suspect committed the crime.

8. It is the cardinal principle of law that whenever a sample for forensic test is obtained or taken into possession, same should be sent to a Forensic Laboratory without any unnecessary and unexplained delay, to rule out the possibility of any fabrication or tampering. Now, in our jurisdiction too, the Supreme Court has started encouraging us to have recourse to such modern scientific and forensic evidentiary methods. In the decision of the Supreme Court in the case of Ali Haider alias Papu v. Jameel Hussain and others **PLD 2021 SC 362** has elaborated the importance of this modern-day scientific evidence in the following words:-

*5. The most significant advancement in criminal investigation since the advent of fingerprint identification is the use of DNA technology to help convict criminals or eliminate persons as suspects. DNA as scientific evidence means 'deoxyribonucleic acid.' DNA can be found in the human body and samples from semen, hair, blood, and flesh can establish a DNA matching with the DNA of another human being. Each human being has a unique DNA pattern, which is acquired by inheriting it from the biological parents. DNA analyses on saliva, skin tissue, blood, hair, and semen can now be reliably used to link criminals to crimes. In criminal cases, like rape, murder, etc., timely medical examination and proper sampling of body fluids followed by quality forensic analysis can offer irrefutable evidence. The criminal justice system is in search of the truth. The development of DNA technology furthers the search for truth by helping police and prosecutors in the fight against violent crimes. Through the use of DNA evidence, prosecutors can establish the guilt of the accused and at the same time, DNA aids the search for truth by exonerating the innocent."*

9. In these circumstances; I am of the considered view that the applicant has made out his case for a grant of post-arrest bail. Accordingly, the instant criminal bail application is allowed, subject to furnishing his solvent surety in the Sum of Rs 100,000/( Rupees one hundred thousand only) and PR Bond in the like amount to the satisfaction of the trial court. The direction is issued to the learned trial Court to expedite the trial and examine material witnesses within one month at least the victim/MLO / Complainant must be examined in the intervening period. In case of non-compliance, a strong reason shall be furnished.

10. The observations made hereinabove are tentative only to decide the instant bail application, which shall not, in any manner, influence the learned Trial Court at the time of the final decision of the subject case.

JUDGE