

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Bail Application No.927 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:- 15.07.2024**

Mr. Muhammad Bilal Rashid advocate for the applicant  
Mr. Khadim Hussain, APG along with Sub Inspector Irum Amjad of PS Women, Liaquatabad.  
Mr. Shah Muhammad Maitlo, advocate along with the complainant

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ORDER

**Adnan-ul-Karim Memon, J:-** Through this bail application under Section 497 Cr.P.C., the applicant Ali Raza has sought admission to post-arrest bail in F.I.R No.07/2024, registered under Section 365-B PPC at Police Station Mahmoodabad, Karachi.

2. The earlier bail plea of the applicant has been declined by the learned Additional Sessions Judge-III (South) Karachi vide order dated 24.01.2024 in Cr. Bail Application No. 233/2024 on the premise that the applicant/accused was arrested at the time of recovery of the victim and she named the applicant/accused in the memo of arrest. In her 164 Cr. P.C. statement, the victim stated that she did not know the names of accused persons except Faizan and Ramzan whereas she identified all accused at the time of recording such statement, including the present applicant/accused. She further stated that only accused Ramzan did not commit rape with her.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant who has a notorious past and exploited his daughter to extort money as he previously lodged FIRs on similar allegations and the same were settled by taking payment; that the forensic report does not suggest the involvement of the applicant as his DNA was not found on the victim's cloth or body; that medical examination of the victim was conducted on 07.01.2024 and as per the opinio of the medicolegal officer nothing can be opined regarding the allegation with the narration that hymen of the victim had an old tear and it was healed, which prima facie suggest that victim was not subjected to the sexual assault between 16.12.2023 and the date of recovery as alleged in the FIR; that Section 375-A PPC do not attract in the applicnat's case as the evidene of alleged rape is the testimony of the victim which is subject to certain orders of the trial Court ; that

complainant's previous conduct is sketchy; that there is contradiction in the memo of arrest, recovery and 164 statement of the victim. In support of his contention, he relied upon the cases of *Shah Muhammad @ Baboo v The State* 2014 YLR 2417, *Ali Raza Azam @ Sana v The State* 2022 YLR 117 *Ghulam Fareed v The State* 2010 YLR 1188 and *Imran v The State* 2016 P. Cr. L.J 1888. He lastly prayed for allowing the bail application.

4. Learned Additional PG assisted by the learned counsel for the complainant has opposed the bail plea of the applicant on the ground that the applicant is specifically nominated in the charge sheet as the victim has leveled a direct allegation rape against the accused person in her 161 Cr. P.C. statement is against her wishes, therefore he does not deserve any leniency by this Court . He prayed for the dismissal of the bail application.

5. Arguments of the parties have been heard at some length, and have perused the material available on record.

6. Primarily, the tentative assessment of the record reveals the following position of the case;-

- a. *the alleged offense took place on 06.12.2023 and was reported to police on 05.01.2024 approximately one month after the delay,*
- b. *the medicolegal certificate of victim Warisha suggests that " on the basis of clinical examination nothing can be opined regarding the alleged act and the matter was referred for DNA.*
- c. *164 Cr. P.C. statement of victim Wareesha was recorded on 13.01.2024, wherein she alleged the act done by unknown assailants, however, she took the name of accused Faizan and Ramzan.*
- d. *DNA report does not suggest that the applicant was a contributor.*
- e. *The trial Court submitted a progress report that the charge was framed on 30.03.2024 and the matter is fixed for 20.07.2024 for evidence of complainant and victim as both appeared previously but their examination in chief was not recorded due to the absence of the counsel.*

7. The mode of occurrence, as narrated by the abductee/victim in her statement recorded under section 161 Cr. P.C. and later on under section 164 Cr. P.C. is indicative of two versions for which the learned trial court has to record evidence of the abductee whether she was subjected to alleged rape at the hands of the applicant as medical evidence and DNA report says something different as reported by the complainant in the FIR lodged on 05.01.2024 after delay approximately one month. In absence of the aforesaid material evidence the sole statement of the victim under Section 164 Cr. P.C. statement needs to be thrashed out in evidence, the

complainant even did not utter a single word for the delay in lodging the FIR. The medical evidence prima facie suggests that the hymen of the victim had an old tear and it was healed, which prima facie suggests two version of whether that victim was subjected to the sexual assault between 16.12.2023 and the date of recovery as alleged in the FIR, or otherwise which is for the trial Court to see after recording the statement of the victim, however, I do not want to give any definite finding on this aspect least it may prejudice the case of either parties before the trial Court. It is the exclusive domain of the trial Court to decide this aspect of this case after recording the evidence. On the aforesaid proposition, I am guided by the decision rendered by the Supreme Court in the case of Muhammad Aslam v The State 2023 SCMR 397.

8. In this case, the prosecution has applied Section 365-B PPC which signifies the carrying away of a woman by any means with the aim that she may be compelled to marry or forced or made to illicit intercourse, against her will. The plain reading of the section indicates two main components and ingredients of the offense, firstly, there must be kidnapping or abduction of a woman, and secondly, the first act of abduction and kidnapping must be with the intent that she may be compelled to marriage or be forced or seduced to illicit intercourse.

9. In the instant case, prima facie the abductee has given two versions of the incident, one before the Police after her recovery and secondly before the Magistrate on 13.01.2024 voluntarily after 8 days from the date of registration of F.I.R, though the alleged offense took place on 16.12.2023 alleging therein that her brother in law Faizan had abducted her and committed the alleged crime but she failed to disclose the name of the present applicant though the applicant was already arrested in the FIR on 07.01.2024 and her statement was recorded on 13.01.2024, however, the statement does not transpire the name of the applicant, which makes the case of the applicant that of further inquiry. On the aforesaid proposition, I seek guidance from the decision of the Honorable Supreme Court in the case of Ehsan Ullah vs. The State (2012 SCMR 1137) wherein it has been held by the Hon'ble Supreme Court of Pakistan as under:-

***“This shows that in the present case the prosecution itself has two versions vis-à-vis the petitioner, first of the complainant party according to which the petitioner was present at the spot and had resorted to firing and second of the investigating agency according to which the petitioner was not present at the spot and he was abetting his co-accused from behind the scene. All these considerations surely render the case against the petitioner one of further inquiry into his guilt.”***

10. In this regard, guidance can also be sought from the pronouncement of the Supreme Court of Pakistan in the case of Zaigham Ashraf versus State, etc. (PLJ 2016 SC 14), wherein the Honorable Supreme Court has been pleased to observe as under:-

***“Keeping in view the two conflicting versions; one given by the complainant in the FIR and the other by the Investigating Agency based on documentary evidence with regard to the plea of alibi, the case of the present petitioner has become certainly one of further inquiry, falling within the ambit of sub-section (2) of Section 497, Cr.P.C., where the grant of bail becomes the right of accused and it is not a grace or concession, to be given by the Court. In the absence of any exceptional ground or reason, denial of bail in such a case would amount to exercising a discretion in a manner, not warranted by law and principle of justice.”***

11. Besides the above, the main purpose of keeping an under-trial accused in detention is to secure his attendance at the trial so that the trial is conducted and concluded expeditiously or to protect and safeguard the society if there is an apprehension of repetition of offense or commission of any other untoward act by the accused. Therefore, to make the case of an accused person fall under the exception to the rule of the grant of bail in offenses not covered by the prohibitory clause of Section 497 (1) Cr. P.C., the prosecution has to essentially show from the material available on the record, such circumstances that may frustrate any of the said purposes, if the accused person is released on bail.

12. The basic principle in bail matters in such circumstances or such conduct of the accused person that may bring his case under the exceptions to the rule of granting bail. They include the likelihood of:

- (a) his absconding to escape trial;***
- (b) his tampering with the prosecution evidence or influencing the prosecution witnesses to obstruct the course of justice; or***
- (c) his repeating the offense keeping in view his previous criminal record or the desperate manner in which he has prima facie acted in the commission of the offense alleged.***

13. In view of the above, the prosecution has not agitated any of the exceptions as discussed supra to attract the principle. It is also essential to note that a court that deals with an application for a grant of bail must apply its judicious mind to the facts and circumstances of the case and the conduct of the accused person, and decline to exercise the discretion of granting bail to accused in such offense only when it finds any of the above-noted circumstances or some other striking circumstance that impinges on the proceedings of the trial or poses a threat or danger to the society, justifying his case within the exception to the rule, as the

circumstances mentioned above are not exhaustive and the facts and circumstances of each case are to be evaluated for application of the said principle. The Supreme Court has already cautioned the learned courts below in *Muhammad Tanveer v. State* PLD 2017 SC 733, in the following terms:

***"Once this Court has held in categorical terms that grant of bail in offenses not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception, then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding [under Article 189] on all Courts throughout the country including the Special Tribunals and Special Courts."***

14. In the present case, the learned trial Court has failed to adhere to the principle of law enunciated by the Supreme Court, as discussed supra, for the exercise of discretion to grant bail in such circumstances.

15. In the light of the principles set forth by the Supreme Court in post-arrest bail matters, as discussed supra, the impugned order passed by the learned trial Court is thus not sustainable under the law and liable to be reversed on the aforesaid analogy. On the aforesaid proposition, I am fortified with the decisions of the Supreme Court rendered in the cases of *Tariq Bashir v. State* PLD 1995 SC 34; *Imtiaz Ahmad v. State* PLD 1997 SC 545; *Subhan Khan v. State* 2002 SCMR 1797; *Zafar Iqbal v. Muhammad Anwar* 2009 SCMR 1488.

16. Keeping in view the facts and circumstances narrated above, the absence of material in the shape of medical, DNA report, coupled with 164 Cr. P.C. statement of the victim, I am of the tentative view that the case of the applicant is of further inquiry fully covered by section 497(2) Cr. P.C. is entitled to the concession of post-arrest bail.

17. In view of what has been discussed above, this bail application is allowed and the applicant Ali Raza is admitted to post-arrest bail in in F.I.R No.07/2024, registered under Section 365-B PPC at Police Station Mahmoodabad, Karachi provided he furnishes bail bonds to the tune of Rs. 200,000/- (Two Hundred Thousand only) and one surety of that amount as well as PR Bond in the like amount to the satisfaction of learned trial Court. The observation hereinabove is tentative which shall not prejudice either party at the trial the same shall be concluded within two months positively without fail.

JUDGE