

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-377 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

09.08.2024

Applicant present on bail.

Mr. Jahanzeb Memon advocate holding brief for Mr. Rasool Bux @ R.B. Solangi advocate for applicant.

Ms. Sana Memon, Assistant Prosecutor General along with SIP Soof Khan Laghari PS Bulri Shah Kareem.

ZULFIQAR ALI SANGI, J Through this application applicant seeks pre-arrest bail in F.I.R. No.36/2024 registered at P.S. Bulri Shah Kareem U/s 114, 376, 511 PPC. His earlier bail application was dismissed by Additional Sessions Judge-I Tando Muhammad Khan vide order dated 21.03.2024.

2. Brief facts of the case are that on 11.03.2024 complainant was going to outside for labour. Complainant's wife namely Ameena & his daughter Sughra aged about 10/11 years were going to get water from minor. They reached at Chuhan Mohalla at about 11000 hours and each one namely Ramzan @ Ramoon S/o Jumoon, Khan S/o Jumoon, Bachayo @ Bachu S/o Jumoon were standing there, meantime namely Khan Muhammad and bachayo Chuhan were instigating to Ramzan @ Ramoon that don't leave them, on that Ramzan @ Ramoon hold the arm of complainant's daughter Sughra, removed the Shalwar and tried to commit Zina. Complainant's wife tried to rescue her and shouted loudly, on shout neighbors came at there, thereafter all accused persons left away. Complainant came at the house, his wife and his daughter narrated the same facts, thereafter complainant made complains to the notables, but no fruitful result came out. Thereafter complainant appeared at PS and registered FIR.

3. It is contended by the learned counsel for applicant that case is false and fabricated; there is/was old dispute between both the parties over matrimonial dispute and complainant party booked three real brothers in present matter; that no any incident as alleged by complainant was happened. He prays for confirmation of bail application. He relied upon the case of MUHAMMAD TANVIR v. The STATE and others (2017 SCMR 366).

4. Learned APG has opposed the bail plea on the ground that applicant is nominated in FIR with specific role and he removed shalwar of victim aged about 10/11 years, attempted to commit rape with her in presence of her mother therefore he is not entitled for the concession of bail.

5. Heard learned counsel for the applicant and learned APG and perused the material available on record with their able assistance.

6. Admittedly the name of the applicant/accused transpired in the F.I.R with specific role that he removed the shalwar of the victim baby aged about 10/11 years in presence of her mother with intention to commit zina. The F.I.R has been lodged on the next day of incident with explanation in respect of the delay. The P.Ws in their 161 Cr.P.C statements has fully supported the version of complainant and the medical evidence also corroborates the same. It is observed that no reason could be offered as to why the victims of like nature cases would have spared the actual offender and should have instead substituted the accused for him. It is further observed that prima facie and for the purpose of bail application, it could not be said that the testimony offered by the victim could admit of any doubt. The offence for which applicant is allegedly involved is a heinous offence against society and is increasing day by day in our country which requires some deterrence and the offenders are to be dealt with iron hands.

7. The concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied about seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of complainant to believe that the applicant/accused has been implicated in this case falsely. The applicant was *prima facie* found in attempting to commit zina with the daughter of complainant aged about 10/11 years. Reliance is placed to the case of '**Mukhtar Ahmad v. The STATE and others**' [2016 SCMR 2064]. The grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of

investigation as observed by the Supreme Court in the case of '**Rana ABDUL KHALIQ v. The STATE and others**' [2019 SCMR 1129].

8. The deeper appreciation of evidence is not permissible at the bail stage and only tentative assessment is to be made as was held by the supreme Court in the case of '**Mehmood Akhtar v. Nazir Ahmed** [1995 SCMR 310]. From perusal of material available on record it appears that sufficient material is available on record which connects the applicant with the commission of alleged offence. Result thereof this application is dismissed and the interim pre-arrest bail granted to applicant vide order dated:16-04-2024 is hereby recalled.

9. The observations made hereinabove are tentative in nature only for the purpose of deciding the instant bail application, which shall not, in any manner, influence the learned Trial Court at the time of final decision of the subject case.

J U D G E

Ali Haider