

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

CrI. Bail Application No.S-129 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

19.02.2024

Mr. Shaukat Ali Rahimoon, Advocate for the applicants.
Mr. Dhani Bakhsh Mari, Assistant Prosecutor General a/w I.O Lalo
of PS Jhun.

Complainant is present in person.

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ORDER

Amjad Ali Bohio, J: After dismissal of the bail application filed by the applicants/accused (hereinafter referred to as "applicants") before the learned Additional Sessions Judge-I, Tharparkar at Mithi, vide order dated 07.11.2023, in Crime No.07/2023 at PS Jhun for offenses under Section 377, 377-B, 292-C, 506(ii), 382, 322, 415, and 34 PPC; the applicants have filed instant bail application. Previously, the applicants were granted bail vide order dated 08.07.2023. However, subsequently, upon the filing of application for the cancellation of their bail under Section 497(5) Cr.P.C bearing CrI. Misc. Application No.749/2023, the Court below recalled the its order dated 08.07.2023.

2. It is alleged that deceased, Wasayo, alias Dado, committed suicide by hanging himself with a rope on 10.04.2023, at 8:30 P.M. in Karachi. The deceased's father/complainant, Ahmed, brought the body and buried it. Later, a witness namely Umar, son of Kareem Dino Lanjo, informed the complainant on 12.04.2023 that on the night between 18/19-03-2023, the accused namely Mubeen, Nabo, Habib, Soomar, Hakeem, Ghulam Muhammad son of Ameen, and Riaz, called the deceased near Dedhal graveyard. There, they allegedly gang-raped and sodomized Wasayo, capturing objectionable videos and photographs. They also allegedly stole a Q-Mobile phone with two Telenor SIMs, a wallet containing Rs. 12000 cash, two silver rings, and a red cap from him. The accused then threatened Wasayo, stating that if he disclosed the incident to anyone,

they would share the videos on social media to defame him. Umar further disclosed to the complainant that the accused Ghulam son of Ameen had shared the objectionable video on WhatsApp, and upon learning this fact, deceased Wasayo committed suicide. The FIR does not mention by whom, the video clips were shared. Following these events, the complainant lodged the FIR on 04.05.2023.

3. The learned counsel for the applicant argues that the applicants are innocent and have been falsely implicated with malicious intent, allegedly at the behest of PW Muhammad Umar. It is contended that PW Muhammad Umar narrated false story to the complainant, who, believing it, lodged the FIR with a delay of one and a half months after the alleged incident. The applicants/accused have been in custody since June-2023 for an unseen offense based on the FIR, which relies on the statement of PW Umar. Certified true copies of the deposition of complainant Ahmed and PW Umar recorded before the trial Court have been submitted, wherein PW Umar purportedly failed to mention anything about the video recording of the alleged incident or by whom the video clips were sent to accused Ghulam via WhatsApp. The counsel further highlights the statement under Section 162 Cr.P.C of PW Muhammad Umar, recorded on 13.11.2023, where he allegedly added three more accused without explanation after a delay of over six months. The counsel argues that the investigating officer (I.O) failed to collect the alleged video clips, and during the investigation, PW Muhammad Umar did not disclose the name of person who shared the video clips through WhatsApp. Therefore, it is argued that further inquiry is warranted, and the applicants are entitled to bail. The counsel also points out that the DNA report during the investigation came in negative, and no video recordings or clips of the alleged incident were collected by the I.O. Additionally, there are conflicting versions of the incident, initially being reported as a suicide, but later alleged to be linked to the aforementioned incident of sodomy by PW Umar, for which no evidence has been collected by the I.O. In support of his contentions, he relied upon the case laws viz: Sohail Akhtar Vs. The State through P.G Punjab and another (2022 SCMR 1447), Muhammad Nauman Hanif Vs. The State and another (2016 SCMR 1399), Abdul Ghaffar Vs. The State and others (2016 SCMR 1523), Muhammad Hussain

Vs. The State (2022 YLR Note 132), Muhammad Tanveer Vs. The State and another (2021 YLR 1736), Saifullah and another Vs. The State (2020 YLR 1045), Ameer Khan Vs. The State (2018 YLR Note 283) and Ghulam Ali Vs. The State (2017 YLR Note 339).

4. The learned Assistant Prosecutor General (A.P.G) opposed the bail application, arguing that the DNA test could not be considered grounds for bail as it was conducted at a preliminary stage of the investigation. However, the A.P.G conceded that the investigating officer (I.O) failed to collect the alleged video recording of the incident, which supposedly led to the complainant's son committing suicide.

5. Heard the arguments presented by both parties and thoroughly examined the record.

6. At the outset it is observed that PW Umar failed to disclose the name of the person who allegedly disclosed this information to deceased Wasayo, leading to his suicide. Furthermore, PW Umar himself had not seen the said video clips/photos of the alleged act, as evident from the perusal of his statements recorded by the investigating officer, as well as, the trial court.

7. Further it may also be observed that the investigating officer (I.O), present in court, states that he did not send the mobile phone of deceased Wasayo for forensic analysis. He also did not check the SIM cards allegedly belonging to the deceased, and no Call Data Record (C.D.R) recording was collected to establish the location of the deceased at the time of the incident. The lack of such material evidence, coupled with PW Umar's failure to provide relevant details about the alleged video recording/clips, raises doubts about the veracity of the allegations.

8. It is worth noting that PW Umar was not present at the time of the incident and he too failed to provide crucial information regarding the sharing of the video clips with the accused Ghulam S/o Ameen Lanjo. He also failed to disclose the source of evidence to ascertain how he obtained knowledge about the sharing of the video clips/photos on WhatsApp. Thus, considering the absence of essential evidence collected by the

investigating officer and the discrepancies in PW Umar's testimony, it appears to be a case warranting further inquiry.

9. As a result of the foregoing considerations, I hereby accept the bail application and grant bail to the applicants/accused. They shall be released upon furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Lakh only) each, along with a Personal Recognizance Bond in the same amount, to the satisfaction of the trial court.

8. Needless to mention that the observations made in this decision are preliminary and shall not prejudice the merits of the case.

JUDGE

Faisal