

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-440 of 2023

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on O/objection at flag-A.
2. For hearing of bail application

Date of hearing **08.09.2023**

M/s Syed Muhammad Ali Shah Rizvi, Alam Sher Bozdar
Muhammad Tarique Panhwar, Advocates for applicant.

Mr. Amir Hussain Qureshi, Advocate for the applicant.

Syed Sardar Ali Shah Addl.Prosecutor General.

ORDER

KHADIM HUSSAIN SOOMRO, J; Through instant bail application, applicant/accused Muhammad Aqeel alias Lalo, son of Muhammad Sharif, seeks post-arrest bail in Crime No.142/ 2023 Police Station, Rohri, for an offence punishable under Sections 376 PPC & 3 TIP. Earlier, his bail application was declined by learned Additional Sessions Judge-II/Gender Based Violence Court, Sukkur, vide order dated 17.06.2023.

2. The case of the prosecution is that complainant Azeem Yousifzai lodged FIR at Police Station, Rohri, stating that on 07.06.2023, his daughter Baby Muskan, aged about 12 years, used to take tuition at the house of the accused. In the morning, his daughter proceeded to the residence of the applicant, Muhammad Aqeel. However, she did not return. Consequently, the complainant, accompanied by his wife, Mst Saba Naz, went to bring her back. Upon arriving outside the residence of the applicant/accused, the complainant saw that his daughter was coming out from the premises by weeping. On query, she disclosed that the applicant/accused, Muhammad Aqeel @ Lalo, had committed Zina with her, and she was feeling pain. Therefore, she was weeping. They saw the accused person exiting his residence and fleeing the scene. Subsequently, the accused and his spouse proceeded towards their

house, along with their daughter, Baby Muskan, at approximately 8:00 a.m. Meanwhile, Faheem Khan, the brother of the complainant, arrived at his residence and was informed about the details of the occurrence by the victim. The complainant then appeared at the Police Station and registered his FIR.

3. Learned Counsel for the applicant submitted that the applicant/accused is innocent and has been falsely implicated by the complainant with malafide intention and ulterior motives; that there is a delay of more than 09 hours in the registration of FIR for which the complainant has furnished no plausible explanation though the distance between Police Station and place of incident is about One K.M; therefore, the false implication of the accused cannot be ruled out; that applicant lent out Rs.200,000/- to the complainant and on demand rather paying the same angry upon the applicant; the WMO medically examined the victim and as per the opinion of doctor no rape has been committed with her, neither there was any mark of violence, nor there was evidence of sexual intercourse.

4. On the other hand, learned counsel for the complainant vehemently opposed the grant of bail to the applicant on the ground that he was nominated in FIR with a specific role and that the applicant/accused has failed to show any specific enmity with the complainant party for involving him in this case falsely. He submitted that the offence with which the applicant/accused stands charged falls within the ambit of the prohibitory clause of section 497 Cr.P.C; therefore, the applicant is not entitled to a grant of bail.

5. Learned Additional Prosecutor General opposed the bail application on the ground that the accused is nominated in the FIR with a specific role; hence, he is not entitled to bail. However, he does not controvert the fact that the DNA report is negative as well as has been recommended under 'C' cancel class.

6. Heard arguments of learned Counsel for the parties and perused the record.

7. Admittedly, there is no eyewitness of the incident. The place of the incident is the house of the applicant accused, who is residing with his

family as well as with his brother; none of them supports the case of the prosecution. During the investigation, the victim underwent a medical examination conducted by a qualified medical officer. Upon external examination, the female doctor observed no obvious marks of violence, such as bite marks, scratch marks, lacerations, or tears. Furthermore, the examination revealed that the victim's hymen was intact, and there was no evidence of bleeding. Samples were also collected for chemical analysis and DNA testing; however, the results of both analyses yielded negative findings. Finally, the female physician gave her opinion that the victim was neither subjected to rape nor attempted rape.

8. In the wake of the registration of FIR, the Senior Superintendent of Police (SSP) in Sukkur formed a Joint Investigation Team (JIT) of four members, one of whom is a female Sub-Inspector of Police (SIP) named Zeenat Gujjar. This team has been assigned the responsibility of conducting the investigation into the present case. Upon thorough investigation, each member of the Joint Investigation Team (JIT) unanimously proposed the disposal of the case under C Class. This classification raises significant doubts regarding the viability of the prosecution's case. Furthermore, the applicant has made allegations and claims that there is a specific overdue amount owed by the complainant.

9. No doubt, in cases of rape, the testimony of the victim alone is considered adequate evidence to establish the charge against the accused. However, it is essential that the statement be independent, unbiased, and straightforward in order to effectively support the accusation against the accused. In the light of medical evidence and the report of JIT, The present case does not fall into either of the categories as cited above. The reliance can be placed in the case of ***Muhammad Aslam V/S The state 2023 SCMR 397.***

10. In the circumstances and in view of above I am of humble view that applicant has made out a good *prima facie* case for his release within the meaning of Sub-section (2) to Section 497 Cr.P.C. Consequently, this bail application is hereby allowed. The applicant/accused Muhammad Aqeel alias Lalo is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty thousand only) and PR bond in the like amount to the

satisfaction of Additional Registrar of this Court. ***These are the reasons of my short order dated 08.09.2022.***

11. Needless to mention here that observation made herein above are tentative in nature and trial Court may not be influenced of the same and decide the case on its own merits as per evidence and the material made available before it.

Bail application stands disposed of in the above terms.

J U D G E

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