

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Bail Application No.S-1159 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

FOR HEARING.

13.06.2018.

Mr. Shabana Norren Khan, Advocate for applicant.

Mr. Shahid Ahmed Shaikh, D.P.G

None present for the complainant though the notice received back served.

ORDER

ZAFAR AHMED RAJPUT, J:- Through this Criminal Bail Application, applicant Waseem Akbar Mallah seeks post arrest bail in Crime No.179 of 2017, registered at P.S Airport, Nawabshah, under Section 376 PPC. His earlier application for post arrest bail bearing No.2067 of 2017 was dismissed vide order dated 14.12.2017.

2. Briefly stated facts of the case are that on 20.10.2017 at 2230 hours, complainant Mst. Afroze widow of Allah Rakhio Jamali lodged FIR with P.S Airport, Nawabshah, alleging therein that her husband Allah Rakhio died about 05 years back and from this wedlock complainant having 03 sibs abd 03 daughters. Daughter No.3 namely Afshan aged about 8/9 years is abnormal and also is not enable to speak. On that night at about 8-00 p.m., complainant sent her daughter for purchasing ice fromm the shop but she did not return, hence, the complainant and her brothers Asif Ali and Ariz Muhammad Ansari came out from the house to trace her. At about 09:00 p.m. they reached near the house of Waseem Mallah. Complainant party opened the door of the *Bethak* and saw on the light of bulbs that cloths of daughter of complainant Afshan and accused were removed and accused Waseem Akbar Mallah was committing

Zina with her. On seeing complainant party, the accused escaped away from the door of house and then the complainant alongwith above named witnesses brought her daughter at P.S Airport and obtained letter for medical examination of her daughter. Thereafter, the complainant came at P.S where she lodged FIR of the incident.

3. Learned Counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in this case by the complainant; that though the allegation of committing zina with daughter of the complainant has been leveled against the applicant / accused, however, the medical report negates the said allegation; that as per the contents of FIR, the applicant / accused on seeing the complainant party ran away from the second door of the room in necked condition, however, none has been cited as witnessed who had seen the applicant / accused running in the street in necked condition, hence, the entire prosecution story is unbelievable. Even the DNA test report does not support the prosecution case, hence, the allegation against the applicant / accused requires further inquiry entitling him for the concession of bail.

4. On the other hand, the learned D.P.G, while admitting the fact that the medial report as well as DNA test are not supportive to the prosecution case, has opposed this application on the ground that atleast attempt on the part of the applicant / accused to commit zina is proved from the material available with the prosecution.

5. Heard the learned Counsel for the applicant / accused well as learned D.P.G and perused the material available on record.

6. It would be seen that the complainant has stated in the FIR that she saw the applicant / accused committing zina with her minor baby, who is

dumb and deaf and the applicant / accused on seeing the complainant ran away from another door of her house, however, it is an admitted position that none had seen the applicant / accused running in the street in necked condition. The alleged victim baby was produced before the Medial Officer PMC Hospital, Nawabshah within an hour of the alleged incident, however, as per medical report, no human semen was detected from the body and cloth of the victim, so also no mark of injury was found on her body and her hayman was intact. The DNA report also does not suggest for the commission of any such offence with the minor baby, hence, the allegation against the applicant / accused with regard to commit zina requires further inquiry as envisaged under Sub-Section (2) of Section 497 Cr.P.C.

7. In view of the above facts and circumstances, the applicant / accused is admitted to post arrest bail, subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand) and P.R Bond in the like amount to the satisfaction of the Additional Registrar of this Court.

8. Needless to mention that the observations made in this bail order are of tentative nature and shall not in any way affect the merits of the case at the trial.

Bail application stands disposed of in the above terms.

JUDGE

Shahid