

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr. Bail A. No. S-397 of 2024

Haji & another.....Applicants

Versus

The State.....Respondent

Abdul Aziz Solangi, Advocate, for the Applicants
Sana Memon, APG

Date of Hearing : 21.10.2024.

ORDER

YOUSUF ALI SAYEED, J - Following the dismissal of their earlier bail Application by the learned Additional Sessions Judge-I Tando Muhammad Khan, the Applicants have approached this Court under section 498 Cr.PC seeking pre-arrest bail in respect of FIR No. 36 of 2024, registered against them at Police Station Tando Ghulam Hyder on 02.03.2024 under Sections 376, 506(2), 504 PPC.

2. The substance of what has been alleged in the FIR as regards the Applicant No.1 is that he forced himself upon the minor daughter of the Complainant, aged about 15 years, so as to have intercourse with her, whereas from the standpoint of the Applicant No.2 it is stated that he was present at the time when the Complainant later approached the uncle of the Applicant No.1 in order to raise his grievance, but was threatened by both of them to remain quiet on that score, with the Applicant No.2 said to have been brandishing a hatchet. As such, for the time being, the averments set out in the FIR can be categorized as having two limbs, one branching towards the Applicant No.1 under Sections 375 and 376 PPC and the other towards the Applicant No.2 under Sections 506 and 504 PPC.

3. Proceeding with his submissions, learned counsel for the Applicant contended that the FIR set out a false case with mala fide intent. Furthermore, he submitted from the standpoint of the Applicant No.1 that the statement of the victim recorded by the magistrate reflected that a nikkah had been solemnized between them, and also placed reliance on the Affidavits submitted by the victim and her parents during the course of proceedings today to argue that the interim bail granted in the matter ought to be confirmed as they had no objection in that regard.
4. However, whilst opposing that plea, it was pointed out by the learned APG that the offence under Sections 376 PPC was non-compoundable and that the DNA Report forthcoming in the matter supported the allegation of intercourse as it reflected that the Applicant No.1 was the biological father of the victim's deceased premature child.
5. Having heard the submissions, it merits consideration that Sections 375 and 376 PPC provide inter alia that:

375. Rape. A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,-

- (i) against her will;
- (ii) without her consent;
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;
- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
- (v) with or without her consent when she is under sixteen years of age.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

376. Punishment for rape. (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.

(1A) ...

(2) ...

(3) Whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or imprisonment for life and fine.

(4) ...”

[Underlining added for emphasis]

6. Under the circumstances, it is apparent that the matter in respect of the Applicant No.1 relates to a non-bailable and non-compoundable offence that falls within the scope of the prohibitory clause, with the assertion of falsity of the FIR and mala fides underpinning its registration having been shorn away from his standpoint by the forensic report that has since come to the fore. However, as for the Applicant No.2, even if the allegations relating to him are accepted, it falls to be considered that the offences under Sections 502(2) and 504 PPC are bailable and the possibility of his having been unnecessarily roped into the fray cannot be ruled out at this stage.
7. In view of the foregoing the interim bail granted to the Applicant No.1 stands recalled whereas that granted to the Applicant No.2 stands confirmed on the same terms, with the Bail Application being disposed of accordingly.

JUDGE

Arif.