

IN THE HIGH COURT OF SINDH, KARACHI

Crl.Bail.Appln.No. 2939 of 2024

Before

Mr.Justice Ali Haider Ada

Muhammad Ashraf & Sulleman Khan, applicants : M/s Malik Khushhal Khan and Malik Fahad Akbar advocate

Saddiq Muhammad, complainant : Syed Mureed Ali Shah Advocate through

The State, respondent, through : Syed Mumtaz Ali Shah, APG along with PI Haji Liaquat Ali PS Boat Basin Karachi

Date of hearing : 03.02.2025

Date of Order : 03.02.2025

ORDER

ALI HAIDER ADA---J., Through this Criminal Bail Application applicants seeks confirmation of ad interim pre arrest bail in FIR No. 687 of 2024 under Section 337-A(iii) PPC registered at Police Station Boat Basin Karachi by the complainant namely Saddiq Muhammad son of Syed Muhammad Saeed Shah. The applicants were admitted to ad interim pre-arrest bail by this Court vide order dated 17.12.2024, hence the same ripe up for confirmation or otherwise.

2. The brief facts of the prosecution case as per FIR is that, the accused namely Sulleman Khokhar son of Muhammad Ashraf is a classmate of complainant and due to the dispute over game, the Sulleman along with his father who was also present caused kicks and fist below as well as caused major injury on his nose as such injury was caused by father Sulleman who is also applicant No.1, namely Muhammad Ashraf, such an incident was reported to the police initially on 08.10.2024 by way of getting medical certificate and police also recorded such incident in entry No.29, further the facts of the prosecution case is that after medical examination the incident was reported on 29.10.2024 at about 1:00 P.M.,

in which the offence punishable under Section 337-A(i) and 337-A(iii) was reported. The medical officer in his final report medical legal certificate opined that the injury No.1 is declared as 337-A(iii).

3. Learned counsel for the applicant submits that actually the bad intention of the Principal is involved and the complainant is in league of that Principal and in order to insists for commission of act of sodomy; the present applicant was insisted by the complainant to approach Principal for such lust; the applicant No.2 has called his father (applicant No.1) and that's why on such point the complainant managed such a concocted story; further submits that the statement under Section 161 Cr.PC are also contradictory in nature with each other as the applicant No.1 who is the father of applicant No.2 declared as innocent by the Investigation Officer but the SSP concerned did not agree with the findings recorded by the Investigation Officer, therefore the name of applicant No.1 was transpired in the challan; further submits that the matter is reported on the basis of mala fide intention as well as ulterior motives of the school management as well as in league of the complainant.

4. Learned counsel for the complainant submits that ocular set is collaborated with medical set of evidence while the complainant opened the institute on 06.08.2024 while he joined the institute on 02.09.2024 as such this is a filthy arguments without any support that school management is involved in any bad habits, further submits that PW-Asma has also recorded her version before the Investigation Officer in which she also supported the case of complainant; further submits that after initial treatment they approached to the private hospitals before one Dr.Aftab Ahmed Memon, in which the prescription is on record by way of statement dated 13.01.2025; further submits that the complainant party moved an application to the SSP concerned for transfer of investigation and

investigation was also transferred by way of filing of an application under Section 22-A & B Cr.P.C on 28.11.2024 while the challan was submitted on 31.12.2024. Learned counsel for the complainant submits that he relied upon the second Investigation Officer but the name of the Investigation Officer is not mentioned in the challan. The second Investigation Officer who was not author of the challan which was submitted on 31.12.2024 but the same was not submitted by the second Investigation Officer as the same was submitted by the first Investigation Officer. Learned counsel for the complainant lastly submits that there is no any enmity between the parties therefore the question of mala fide intention and ulterior motives is lapse in this case, as such the applicants are not entitled for confirmation of ad interim pre arrest bail.

5. Learned APG supported the order; however further submits that the medical evidence is fully with the ocular set and even if there is any mala fide of the Investigation Officer is there, then why he declared applicant No.1 as innocent, so the applicants are not entitled for the confirmation of ad interim pre arrest bail; further the offence falling under Section 337-A (iii) PPC falls within the prohibitory clause of Section 497, CrPC.

6. Heard arguments and perused the material available on record.

7. On 08.10.2024 the police recorded one DSD entry bearing No.29 which is already available in the police papers, in which the complainant disclosed before the police that he was not remember the name of applicants, further such entry which is subject information did not disclose the name of applicant party. In the police papers report of radiologist is missing, in which it is very difficult to determine that whether the bone is dislocated or not so, it is yet proper that to examine each and every canon of the papers in which it was totally missing either the matter falls within

under Section 337-A(iv) or (iii) while the Investigation Officer did not see the radiologist report about dislocation or location of the injury. Further the applicant No.1 who caused serious injury was declared innocent by the Investigation Officer. No doubt, the opinion of the Investigation Officer is ipsi-dixit but at bail stage it may be considered as tentative in nature. The doctor namely Aftab Ahmed Memon who at the first instance treated the complainant was also not examined by the Investigation Officer.

8. In view of such circumstances, the ad interim pre arrest bail earlier granted to the applicants by this Court vide order dated 17.12.2024 is hereby confirmed on the same term and conditions.

Note:- This order is tentative in nature and will not prejudice merits of the case at the trial.

The criminal bail application is disposed of.

J U D G E

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