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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Bail Appln. No.S-329 of 2021.

Date Order with signature of Hon'ble Judge

1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Abdul Rehman A. Bhutto, advocate for the applicant, along with applicant.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Mr. Waqar Ahmed Chandio, advocate for the complainant.

Date of Hearing : 25.08.2021.
Date of decision : 25.08.2021.

ORDER

Omar Sial, J.- Samiullah Ghangro, the applicant, has been accused of offences under sections 504, 506/2 and 509, P.P.C. and in this connection an F.I.R. bearing number 102 of 2021 has been registered against him at the Ratodero police station. He sought pre-arrest bail from the court of the learned Additional Sessions Judge, Ratodero but his plea was dismissed on 27-7-2021. He has now approached this Court seeking pre-arrest bail.

2. The aforementioned F.I.R. against the applicant was lodged by Khalida Parveen on 10-7-2021 reporting an incident which had occurred on 8-7-2021. She recorded that she is a midwife at the Mansoor Maternity Home, which is also part owned by her. Previously she had worked at several maternity clinics which also included a medical centre by the name of Indus Medical Centre in Ratodero, which is owned by the applicant. Khalida worked there for 5 to 6 years during which period she was sexually harassed by the applicant but that she preferred to stay quiet about his behavior. After she left work at the applicant's medical centre and opened her own business, the applicant continued to harass her and threaten her that she should rejoin his business or he would defame her. The applicant also had an exchange of heated words with her husband. On 8-7-2021, while Khalida was at work at her maternity clinic along with her husband and her brother-in-law, the applicant came and started to abuse her. Her husband intervened at which the applicant

pulled out a pistol and said that if she did not come to work at his medical centre he would kill her husband and her brother-in-law. The applicant then left the premises. It was after consultations with some *neek mards* of her community that she came to the police station to lodge an F.I.R.

3. I have heard the learned counsel for the applicant as well as the complainant and the learned DPG. The complainant along with her husband and brother-in-law were also present. My findings and observations are as follows.

4. The F.I.R. itself reflects that it was lodged by the complainant after consultations with others. The fact was also confirmed by the husband of the complainant during the hearing of this application. While I can understand such a delay taking place in the case of rape, in the circumstances of the case, I find the delay odd and am skeptical that the same may have taken place to fabricate a case. I can understand that a woman may stay silent when exposed to harassment but in this particular case there appears little reason for her or her husband and brother-in-law to enter into consultations before reporting the offence to the police. The method of harassment is not clear at this stage and when the learned counsel was asked as to *prima facie* evidence of the harassment, he replied that it was primarily through telephone calls and that there is a USB which records some conversations. The transcript of what the USB contains has not been made as yet and examining the same at this stage would tantamount to deeper appreciation of evidence which is not permitted. It will also have to be determined at trial whether the recording complies with the criteria laid down by the Hon'ble Supreme Court in the case of **Ishtiaq Ahmed Mirza and others v. Federation of Pakistan & others** reported at PLD 2019 SC 675.

5. The story narrated in the F.I.R. also *prima facie* does not reconcile with ground realities. I find it odd at this stage that the two men who were present with the complainant stood as bystanders while the whole scene unfolded. If they were scared at that particular moment because of the pistol that the applicant ostensibly carried, there seems little reason for them to remain silent post the applicant leaving the premises. The reason for the presence of two men in the maternity clinic at that time is also not apparent at this stage. The absence of any other witness who would have at least provided evidence, albeit oral, of the commotion which would

reasonably be expected to be raised at the time of such an incident, considering that the whole scene took place at 5:00 p.m. in a maternity centre situated in a populated area in a small town, requires further care and caution in the tentative assessment of evidence. There are several other aspects of the case which, at this preliminary stage, and upon a tentative assessment, appear to be not confidence inspiring. I have refrained from commenting on those aspects lest the case of either party be prejudiced at trial. Suffice to say that the prosecution will need to prove the allegation through evidence as there is doubt, at the moment, regarding its accuracy and veracity. It is well settled that the benefit of doubt can be given to an accused even at bail stage. The applicant is apparently an advocate by profession with no crime record and would apparently be humiliated if bail is denied to him especially when *malafide* on the part of the complainant cannot conclusively be ruled out at this preliminary stage. Offences under section 504 and 509 are both bailable whereas there appears to be little evidence at this stage regarding an offence under section 506/2 P.P.C. having occurred. Of course it is the learned trial court which will finally decide this issue.

6. The learned counsel for the Complainant has relied on cases reported at 2021 P.Cr.L.J. 119, 2020 P.Cr.L.J. 755, 2019 P.Cr.L.J. 769, 2018 P.Cr.L.J. 408 in support of his arguments. With much respect, the case law cited by the learned counsel pertains to cases where obscene and objectionable photographs and videos were uploaded on the internet and the Hon'ble Judges in these cases denied bail though the punishment for the offence was falling within the non-prohibitory clause of section 497 Cr.P.C. The circumstances of the present case are very different.

7. In view of the above, I am of the view that the applicant has made out a case for grant of pre-arrest bail and accordingly the interim bail granted to him earlier stands confirmed on the same terms and conditions.


JUDGE