

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

C. Bail Nos 105/19

Sajjan Gadhvi and others v/s The State

SINDH HIGH COURT

Before Mr. Justice Muhammad Saleem Jessar

Composition of Bench

Single/D.B.

Dates of hearing: 18-03-2019

Decided on : 18-03-2019

(a) Judgement approved for reporting.

YES

No

CERTIFICATE

Certified that the judgment • / Order is based upon or enunciates a principle of law • / decides a question of law which is of first impression / distinguishes / over-rules / reverses / explains a previous decision.

•Strike out whichever is not applicable.

- NOTE:—**(i) This slip is only to be used when some action is to be taken.
(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
(iv) Those directions which are not to be used should be deleted.

(5)

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
1st. CrI. Bail Appln. No.S-105 of 2019.

**DATE
OF HEARING**

ORDER WITH SIGNATURE OF HON'BLE JUDGE

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

18.03.2019

Mr. Ali Nawaz Ghanghro, advocate for the applicants, along with applicants (on bail).

Mr. Shahzad Sodhar, advocate for the complainant.

Mr. Sharafuddin Kanher, A.P.G.

Muhammad Saleem Jessar, J- Through instant bail application, applicants Sajjan son of Gullan Khan and Amjad son of Sajjan, both by caste Gadehi, seek their admission on pre arrest bail in Crime No.20 of 2019 registered at Police Station Mehar for offence punishable under sections 376, 511, 506/2, PPC.

2. Pre-arrest bail application No.193/2019 was filed by the applicants before the Court of Additional Sessions Judge-III, Dadu where they were granted ad-interim pre arrest bail on 12.02.2018 and subsequently after hearing the parties their application was dismissed and interim order passed earlier was recalled vide order dated 16.02.2019, hence this application.

3. After registration of the FIR, it was recommended to be disposed of under cancelled 'C' class, however, the report furnished by the Investigating Officer in terms of Section 173, Cr.P.C before the Civil Judge and Judicial Magistrate was turned down and therefore, the applicants have been arrayed as accused.

4. The crux of prosecution case is that complainant Mst.Samina daughter of Ghulam Rasool got her case registered at the aforesaid Police Station, mentioning that she is married with accused Amjad and used to reside with him. Her father-in-law namely, Sajjan was keeping evil-eye upon her, therefore she made such complaint to her husband i.e. accused Amjad, who did not respond to it, therefore, she called her parents. On her complaint, her father Ghulam Rasool and mother Heer Khatoon came to meet her and after taking supper they went to sleep, while her husband was out of home; at about 1100 hours of the night her father-in-law Sajjan entered in her room and

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attempted to commit zina with her, she raised hue and cry, which attracted to her parents and therefore she was rescued and FIR to that effect was registered on 10.02.2019.

5. Mr. Ali Nawaz Ghanghro, learned counsel for the applicants, submits that case against the applicants is false one and they have been implicated in this case with mala fide intention. Learned counsel further submits that the parties are tied in matrimonial relations, as the daughter of applicant Sajjan i.e. sister of accused Amjad is married with uncle of complainant, namely, Ghulam Mustafa and in exchange whereof her (complainant's) hand was given to accused Amjad. Learned counsel further submits that looking to the ill-character of the complainant, applicant Amjad has divorced her on 21.01.2019 and therefore she was ousted from the house. Learned counsel further submits that the case is of mere attempt, which is yet to be proved at the trial, besides, during investigation the case was found false and was recommended to be disposed of under cancelled 'C' class. He next submits that entire case of prosecution is full of doubts and requires further enquiry as envisaged under sub-section (2) of Section 497, Cr.P.C, therefore, he seeks confirmation of earlier order dated 20.02.2019.

6. Conversely, Mr. Sharafuddin Kanher, learned A.P.G opposes the bail plea on the ground that the applicants are nominated in the FIR and applicant Sajjan has tried to commit shameful act of zina with his daughter-in-law i.e. the complainant.

7. Mr. Shahzad Sodhar, learned counsel for the complainant along with complainant, also opposes the bail plea on the ground that the offence with which applicants are charged is heinous one and the applicant Amjad, being husband of complainant, was required to protect the complainant, but he being in league with his father has not supported the complainant, therefore, such conduct on his part is also questionable and in the circumstances the applicants do not deserve the concession of extra ordinary relief in shape of pre-arrest bail.

8. I have heard learned counsel for the applicants, learned A.P.G and counsel for the complainant as well as have gone through the material made available before me on record.

9. Admittedly the parties are in relation with each other and there are exchange marriages between them. The version of complainant that that accused/applicant Sajjan in the state of drunk

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entered her room, particularly when her parents were also available in her house, and he attempted to commit zina with her, does not appeal to the prudent mind. The prosecution story does not appear to be convincing and confidence-inspiring, as an aged person, who by relation is father-in-law, cannot be believed to commit such an obnoxious act with the wife of his real son and that too at the time when her parents are available in the same house. As has been disclosed by the parties, it appears that they are already on strained relations over matrimonial affairs and from the conduct of the parties, it can easily be gleaned that the story mentioned in the FIR is not based on truth. Furthermore, the FIR was lodged with the delay of twenty-two days and for that no plausible explanation has been furnished by the prosecution. In this regard, reference can be had from the case of *Ayub Masih v. The State* (PLD 2002 SC 1048).

10. In view of above discussion, I am of the considered view that the applicants have been able to make out their good prima facie case for their admission on pre-arrest bail and their case is purely covered by sub-section (2) of Section 497, Cr.P.C. Accordingly, instant bail application is allowed and interim bail granted to them vide order dated 20.02.2019 is hereby confirmed on the same terms and conditions.

11. Needless to mention here that the learned trial Court shall not be influenced by observations made in this order while deciding the case of the applicants as the observations made hereinabove are tentative in nature.


Judge