

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Bail Appln. No.332 of 2024

Applicants

Qadir & Sadullah Malik. : through M/s Zulfiqar Ali Panhwar & Deedar Ali M. Chohan, Advocate.

The State

: through Mr. Khalil Ahmed Maitlo, D.P.G. Sindh for State.

Complainant,

Wazir Ahmed Malik. : In person.

Date of hearing. : 07.04.2025

Date of Order. : 07.04.2025

ORDER

Ali Haider ‘Ada’, J. Through the instant bail application, the applicants/accused, namely Qadir and Sadullah Malik, seek pre-arrest bail in Crime No. 69 of 2024, registered under Sections 377, 506(2), and 34 PPC at Police Station Adilpur. The incident was reported on 10.04.2024, whereas the date of occurrence, as mentioned in the FIR, is 07.04.2024. the applicants filed their bail before Learned IInd Additional Sessions Judge Mirpur Mathelo but their bail application was turned down vide order Dated 25-04-2024.

2. The brief facts as per FIR that applicants along with one Adnan son of Sher Muhammad Kalwar and three unknown accused persons armed with pistols committed Sodomy with victim Adil Malik aged about 12 years, as and when complainant party came, then the accused party fled away as after seen them. After the medical check-up the complainant approached before concerned Police Station for recording his statement u/s 154 Cr.P.C, as his statement was recorded.

3. Initially the interim challan was submitted, in which the applicant/accused were shown as an accused while investigation was transferred to second I.O, namely, SIP Mehrban Kolachi, in which he submitted the final report before concerned Magistrate by exonerating/let-off accused Adnan on the basis that complainant on 29.05.2024 has recorded his further statement whereby he exonerated said accused Adnan.

4. Learned Counsel for the applicants/accused submits that FIR was lodged without any plausible explanation as there is delay of three days, further submits that during course of medical examination the Medical Officer opined that no bruise or tear present at anus side, such opinion falls that medical is in negative in nature. He further relied upon the report of chemical examiner which also supports the case of applicant in which the chemical examiner analyzed that during test human sperms were not detected on external rectal cotton swab collected during medical examination of victim Adil. He further submits due to the dispute over property the name of applicants transpire in the FIR as they are close related to each other, therefore, availability of false implication cannot be ruled out. In support of his contentions he places reliance upon the case of *Kiramat Khan v. The State and another* (2024 YLR 1529).

5. Complainant Wazeer Ahmed present in person reposes faith upon learned Deputy Prosecutor General to proceed case on his behalf.

6. Learned Deputy Prosecutor General appearing for the State submits that no doubt the medical as well as chemical is in negative in nature but at the time of hearing bail application a tentative assessment is required and the applicants are totally failed to establish material in order to involve such applicants in heinous

offence, further sole testimony of applicant is involved in commission of offence, therefore, they are not entitled for concession of bail.

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

8. Although the offence is of a heinous nature, it is a well-established principle of law that the heinous of the offence alone is not a sufficient ground to deny the accused the concession of bail. Reliance is placed upon the *Case of Husnain Mustufa Vs. The State & another (2019 SCMR 1914)* and case of *Nasir Khan Vs. Waseel Gul & another (2011 SCMR 710)*.

9. As regards the reliance on sole testimony to connect the applicants/accused with the commission of the offence, that such testimony shall be sufficient, impartial and independent provided, it is corroborated by other evidence which lends assurance to the version of victim. Reliance is placed upon the *Case of Atta Ul Mustufa Vs. The State & another (2023 SCMR 1698)*.

10. In the instant case, the medical evidence does not support the ocular version, and both the Chemical Examiner's report and the DNA analysis are negative, thereby weakening the prosecution's case. I am fortified by the order in *Sohail Akhtar v. The State and another (2022 SCMR 1447)*, wherein the Honourable Supreme Court was pleased to grant bail, observing that "...As per the contents of crime report, the allegation against the petitioner is that he committed sodomy with the minor son of the complainant. However, according to the medical report, which was done promptly after the occurrence, there was no injury mark found around anus; anal bone was normal and was admitting one finger, which seems to be normal."

11. Furthermore, I place reliance upon the verdict of the Honourable Supreme Court in case of *Muhammad Nauman Hanif Vs. The State and another (2016 SACMR 1399)* and case of *Abdul Ghaffar Vs. The State and another (2016 SCMR 1523)*, wherein bail was granted in circumstances where the medical evidence did not support the prosecution's version and the medical officer's opinion appeared to favour the accused. In such situations, bail was considered an appropriate relief. The facts of the present case fall within the parameters laid down in those precedents.

12. For the foregoing reasons, I am of the considered view that the applicants/accused have made out a prima facie case warranting confirmation of pre-arrest bail. Accordingly, the instant bail application is allowed. The interim pre-arrest bail earlier granted to the applicants/accused vide order dated 22.05.2024 is hereby confirmed on the same terms and conditions.

13. Needless to observe that the findings and observations made hereinabove are tentative in nature, and the trial Court shall not be influenced by the same in any manner whatsoever. The case shall be decided strictly on its own merits, in accordance with the evidence and material that may be brought on record during trial.

14. Bail application stands disposed of in the above terms.

J U D G E

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