

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 1830 of 2016

Imran S/o Akhtar

Vs.

The State

Present:

Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 06.01.2017
Applicant : Through Mr. Muhammad Akbar Khan, Advocate
State : Through Mr. Zahoor Shah, APG and Ms. Yasmin Sultana, State Counsel
Complainant : Through M/s. Falak Sher Khan and Muhammad Ilyas Qureshi, Advocates

ORDER

Zulfiqar Ahmad Khan. J:- Through the instant second bail application Imran (accused) has stated that the complainant (victim) Anita in her latest cross-examination dated 27.09.2016 has stated that she was previously in love with him and in fact wanted to marry him, and she only lodged the FIR upon being pressurized by her parents, and she has confirmed that the accused never had sexual intercourse with her, and the accused is willing to marry her and he be released as he is innocent and that she has no objection if he is in fact acquitted from this case.

The counsel appearing for applicant/accused submitted that since the victim during her cross-examination has exonerated the accused, thus in the given circumstances, the case has become *a case of further inquiry* and since the superior courts have held that deeper appreciation of evidence is not allowed at bail stage, therefore, the accused be enlarged on bail. In support of his contention, he placed reliance on an unreported case of Criminal Bail Application No. 1705 of 2015, where *vide* order dated 16.02.2016 in a similar situation, where the offence of rape was

alleged, complainant and his daughter gave statement before the Court that they have forgiven the accused in the name of Allah and had reached to a compromise with the accused. While the offence was not compoundable, the Court, taking the filing of a mere affidavit as the case where the complainant was no more interested to prosecute the accused, posed with little chances of conviction of the accused by placing reliance on cases of Zakir Hussain vs. The State (2007 YLR 1398) and Syed Azmat Hussain Shah vs. The State (2009 PCrLJ 780) enlarged the accused on bail. Learned counsel also submitted that Courts can never solely rely on the contents of FIR and examination-in-chief, rather have to consider cross-examination, as well as, re-examination, if any, before making up of mind as to the possibility of convicting the accused or enlarging him on bail. In support of his contention he referred to the cases reported as 2014 YLR 1161 (Peshawar), 2013 YLR 911 (Sindh), 2012 PLD (Sindh) 42, 2009 MLD 8651 (Karachi), 2009 P.Cr.LJ 780 (Islamabad), 2007 YLR 1398 (Lahore) and 1997 PCrLJ 1193. The counsel additionally contended that in fact the offence never took place and by reliance on the medical report dated 29.01.2016 declaring that no human male DNA was identified in the vaginal swab sought release of the accused on bail, if not acquittal at this instant.

Learned APG while placing reliance on 1997 PLD SC 347 and 1994 PLD SC 133 submitted that since the offence is non-compoundable, there is no possibility of exonerating the accused, therefore, the instant bail application be dismissed.

As to the issue of DNA report, this Court's order dated 30.05.2016 still holds good as no new findings having come to surface no comments are made thereon. However as it appears from the foregoing, the only new ground that has been brought in

the instant second bail application is the cross-examination of the victim dated 27.09.2016, where she has taken a complete somersault and changed her version and resiled from the statement she gave during examination-in-chief, as well as, in her statement under Section 154 CrPC that the accused had committed rape on her on which ground accused's earlier bail application was rejected. That being the case, wherein the victim taken total somersault, on the previous date of hearing, Court issued notice to the complainant/victim as well as to her parents, to ascertain the truth behind the two versions of statements now present before this Court. Since it was (sadly) apprehended that the victim may have been pressurized or coerced to make such a contrasting statement in favour of the accused. In today's hearing, while the victim refrained from making any statement, her parents submitted that on account of family-elders' decision to patch-up this case, supported by the confidence that the accused has agreed to marry the victim, for good orders sake, we have decided to exonerate the accused, so that the accused and the victim could get married and live a happy life together. When asked the very specific question as to the offence of rape having been committed in respect of which the FIR was filed, the parents jointly and severally confirmed that the incident did took place and affirmed that the earlier version of the victim that she was subjected to rape was correct.

In the given circumstances, this court is faced with following questions:

- (a) value of compromise, effected between the parties at bail stage; and

(b) legal possibilities in rape case where the victim has resiled.

With regards (a), the Apex court in Tariq Mehmood vs. Naseer Ahmed (2016 PLD347 SC) has clearly held that compounding of offence at the stage of bail could not be given effect. Also in the case of Muhammad Iqbal vs. Muhammad Anwer (2016 YLR 208) Peshawar High Court held that compromise, effected between the parties at bail stage, could not be made basis for acquittal of accused during trial since under section 345(2), CrPC, as it would be the trial court which had to satisfy itself and grant permission in respect of compounding of the offence. Thus to me, this compounding (reconciling) initiate is a non-starter.

With regards (b), as to rape case when victim has resiled from her initial statement, it is quite easy to answer. It is no secret that the offence of rape is an offence against the state where it is not open to the affected party to compromise the matter with the accused. It is a matter of serious concern that while in the cross the victim girl has stated that there was no occurrence of rape, however in F.I.R. and in the statement before police she alleged rape and being poisoned by petrol (which found substantiated by the medical report dated 12.09.2015). She having now resiled from her original version; it is not acceptable. Either the occurrence is false or the recent statement of the victim girl is false. Logic accepts the later view since no motive could be seen as to why the victim would implicate the accused in such a heinous case (of rape) where her own chastity was put at peril and resultantly permanently jeopardized. However, by having to agree to marry the victim, court can clearly see admission of guilt on part of the accused. No person, who spends more than one year on account of false rape charge will ever agree to marry the girl alleging rape and

spend rest of his life happily with her. It definitely is no legal or logical possibility.

Conclusively I do not find any fresh support coming forward towards the case of the accused, except that to frustrate the process of law, pressure has been exerted on the victim and her family to settle the matter out of the Court. In the given circumstances, I do not find any merit in the second bail application, which can only be constituted as an attempt of further victimization of the victim and her family, I thus reject the said application.

JUDGE

Barkat Ali/PA