

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**Criminal Bail Application No.467 of 2018**

Applicant : Ali s/o Muhammad Siddiq  
through Mr.Muhammad Shafiq, Advocate.

State : through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General Sindh.

Date of Hearing : 23.07.2018

**ORDER**

**AMJAD ALI SAHITO, J :-** Through instant bail application, the applicant/accused Ali S/o Muhammad Siddiq seeks pre-arrest bail in Crime No.297/2016 registered at Police Station Jamshed Quarters, Karachi for offence under sections 377, PPC, after his bail plea has been declined by the learned IVth Additional Sessions Judge, Karachi East, vide order dated 16.03.2018.

2. Precisely, the relevant facts leading to disposal of instant bail application are that FIR lodged by the complainant Muhammad Akbar on 13.8.2016 at 2230 hours with police station Jamshed Quarters stating therein that he is working at Byco Petrol Pump, Johar Mor Service Station, to his house alleging therein that today after Isha Prayer he reached to his house and found mob of people outside the house and his wife and son Hasnain aged about 8 years were present at home. It is further alleged in the FIR that his wife disclosed him by weeping that one Mohallah boy Ali committed sodomy with his son Hasnain. Upon checking, he found a wound on the anus. On

inquiry, he came to know that about 07:00 when electricity was not available then one mohalla boy Ali son of not known who enticed away from his son for committing sodomy towards under construction Baghdadi Masjid near martin quarters and committed sodomy with him. This incident was also witnessed by his elder son and other children.

4. Learned counsel for the applicant/accused, *inter-alia*, has contended that the applicant/accused is innocent and has falsely been implicated in this case by the complainant with *malafide* intention and ulterior motives; that the case was very old while the applicant/accused is also resident of the same locality, but no one came at the residence of the applicant/accused and the Investigating Officer submitted report under "A-class"; that the complainant after lapse of sufficient time only to pressurize and cause unjustified harassment to the applicant/accused; that the offence does not fall within the prohibitory clause of section 497 Cr.P.C. and in such type of cases, grant of bail is a rule and its refusal is an exception; that the applicant/accused is not a hardened, desperate and dangerous criminal; that the applicant/accused is a resident of Karachi and he will neither abscond nor temper the prosecution; that the applicant/accused is not a previous convict.

5. Conversely, learned D.P.G. for the State has opposed for the grant of bail to the applicant/accused, however, he admitted that the complainant has not implicated the present applicant/accused in his evidence recorded before the trial Court.

6. I have heard the learned counsel for the respective parties and perused the record of this case.

7. The learned trial Court has examined the complainant and such deposition is filed by the complainant. From the perusal of the deposition of the complainant, it reveals that the complainant has not identified the applicant/accused in the case by saying that "I cannot identify. accused Ali brought in the case as I only nominated one accused with the name of Ali upon information of local resident." Furthermore, the Investigating Officer has submitted a report in this case under section 173, Cr.P.C. under "Cancel Class". Since the complainant has not implicated the present applicant/accused in his evidence for the commission of the offence, therefore, all these questions will be decided by the learned trial Court after recording the entire evidence of the prosecution. From the tentative assessment and the material available on record, I hold that the case of the applicant/accused, *prima facie*, requires further inquiry as contemplated under section 497(2), Cr.P.C. and consequently instant ad-interim pre-arrest bail granted to the applicant/accused Ali S/o Muhammad Siddiq vide order dated 28.03.2018 is hereby confirmed on the same terms and conditions.

**J U D G E**