

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Bail Application No. 367 of 2020
Syed Raees Abbas Shah S/o Ghulam Jaffer Shah (Applicant)

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Bail Application.

20.05.2020.

Mr. Muniruddin Advocate for Applicant.
Ms. Seema Zaidi Deputy Prosecutor General.
Victim Rehana in person.
S.I.P Ismail Qureshi I.O of the case.

Through this Application the Applicant seek post arrest bail in FIR No. 768/2019 registered under Section(s) 496-A, 376, 337 & 34 Pakistan Penal Code, at P.S. Surjani, Karachi. The earlier bail application of the Applicant /Accused stands dismissed by the Court of Additional Sessions Judge, Karachi, West, vide Order dated 19.02.2020.

I have heard the learned Counsel for the Applicant/Accused, Deputy Prosecutor General and the victim in person. My observations are as under:-

- i. It appears that this is a case of alleged rape of victim Mst. Rehana Zafar, who has reported the matter through her brother as a Complainant according to which she was first abducted and then rape / zina was committed by all the accused. The incident happened on 2.11.2019 and FIR was lodged on 4.11.2019.
- ii. Learned Counsel for the Applicant has first argued that there is delay of 2 days in lodging of the FIR and of I month and 8 days in recording of her 164 Cr.P.C. statement, whereas, in addition there is also contradiction in the FIR, 161 and 164 Cr.P.C. statements; hence, it is a fit case for grant of bail. As to delay as well as the discrepancy in statements, if any, in the peculiar facts and circumstances of this case, wherein, the allegation has been levelled by the victim that the Applicant/Accused, along with others absconding accused had committed Zina with her, I am not impressed that this delay or even minor discrepancy can alone be the sole ground to grant bail to the Applicant/Accused.

iii. It is a matter of fact that victim has recorded her Statement under Section 164 Cr.P.C before the learned Magistrate and presently there is nothing on record not to believe such statement, which is in respect of an offence allegedly committed with her by her brother-in-law. She has already been subjected to cross examination by the Applicant's Counsel. She is present in Court and while confronted has reiterated the same and has also stated she is being subjected to direct threats by the brother and relatives of the Applicant / Accused.

iv. The other argument of the learned Counsel for the Applicant is premised that since no DNA test has been carried out, the case and the alleged offence would not be proved at the trial; hence the Applicant is entitled to bail. Again, I am not impressed with this argument as by law, it is not mandatory that in each and every case of rape/zina, DNA test must be carried out.

v. Even otherwise, by now it is settled law that in a case of rape / zina it is not always mandatory to conduct a DNA test. It could be one of the modes adopted by the prosecution, whereas, the case is also dependent on the other evidence available with the prosecution. It is well-established by now that "omission of scientific test of semen status and grouping of sperms is neglect on the part of prosecution which cannot materially affect the other evidence."¹

vi. Reliance may also be placed on the cases reported as *Haji Ahmad v State* (1975 SCMR 69), *Irfan Ali Sher v. State* (Jail Petition No. 324/2019, decided on 17 April 2020), *Farooq Ahmed v The State* (Jail Petition No.73/2016, decided on 12.5.2020). So all in all the complainant / victim can even proceed with its case and allegations without any DNA test mandatorily.

vii. It is a settled law that a 164 Cr.P.C. statement, especially in a case, wherein, the victim has come forward to allege rape, cannot be discarded, just because of delay and can be considered as material for the purposes of deciding a bail application and implication of the applicant / accused. The Hon'ble Supreme Court in the case reported as *The State / ANF v Aleem Haider* (**2015 SCMR 133**) had even recalled a bail granted by the High Court ignoring 161 Cr.P.C. statements of the witnesses. In the case reported as *Mst. YASMIN BUTT Versus MAJID BAIG alias BOBBY PEHLWAN* and another (**2018 SCMR 1602**), the Hon'ble Supreme Court has been pleased to recall a pre-arrest bail order in a case of rape on the ground that mere delay in lodging the FIR is not fatal in such cases whereas, during investigation statements of victim were recorded under sections 161 and 164, Cr.P.C., wherein she gave the details of

¹ Shakeel v State (PLD 2010 Supreme Court 47)

the occurrence and fully implicated the respondent-accused. In cases of like nature, it is not always that a statement of a victim of rape must also necessarily be corroborative; as it has been held by the Hon'ble Supreme Court in the case reported as **SHAKEEL and 5 others Versus THE STATE (PLD 2010 Supreme Court 47)**, *that corroboration is not a rule of law but that of prudence.*

In view of hereinabove facts and circumstances of this case, I am of the view that the Applicant / Accused has failed to make out a case for grant of bail and accordingly instant bail application stands dismissed. It is needless to state that the observations made hereinabove are tentative in nature and shall not have any effect on the trial which shall proceed in accordance with law.

J U D G E

Ayaz P.S.