

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Criminal Bail Application No.S-1200 of 2019

| | |
|------|-------------------------------|
| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------|-------------------------------|

For orders on office objection
For hearing of main case.

17.08.2020

Mian Taj Muhammad Keerio, Advocate for applicant.

Mr. Nazar Muhammad Memon, Addl.P.G. along with complainant.

-.-.-.-

RASHIDA ASAD, J: Through this application, applicant Ali Sher seeks post-arrest bail in Crime No.106/2020 registered at P.S Pinyari for offences under sections 376, 493-A, 496-B PPC, after dismissal of his previous bail application by the Court of II-Additional Sessions Judge, Hyderabad vide order dated 04.11.2019.

2. Brief facts of the case are that the complainant Mst. Sofia recorded FIR at P.S Pinyari on 31.07.2019 at 1730 hours alleging therein that she was working in the house of one Sadaruddin Qureshi in Chishtia Colony where applicant Ali Sher used to come to see the sons of Sadaruddin Qureshi namely Sunny Qureshi and Ikram Qureshi. She has further alleged that applicant Ali Sher along with his said friends committed zina with her on many occasions and that she is pregnant of 3/4 months. Such F.I.R. was lodged.

3. It is, inter alia, contended by learned Counsel for the applicant that the applicant is innocent and has been falsely implicated in this case by the complainant with ulterior motives and malafide; that there is an inordinate delay of about 10/11 months in lodging of the F.I.R. without any plausible explanation; that the applicant and complainant are neighbourers and a quarrel took place between them due to which she implicated the applicant in this false case; that complainant in her 161, Cr.P.C statement claiming

her to be the wife of applicant and staying with him since 1 ½ years. (The learned counsel has referred to further statement of complainant recorded on 07.08.2019); that the complainant in order to prove her version did not produce any witness before the I.O for recording their statements u/s 161, Cr.P.C; that the co-accused Sunny and Ikram against whom same allegations were made have been placed in column No.2 by the I.O.; that no DNA test was conducted to prove the allegations against applicant. Learned counsel has lastly contended that in light of above submissions the case of the applicant requires further inquiry as such prayed for grant of bail to the applicant.

4. Learned Additional Prosecutor General Sindh opposed the grant of bail, though halfheartedly.

5. I have considered submissions of the parties and perused material available on record. There can be no escape from the fact that the applicant is nominated in the F.I.R. with specific allegation. However, tentative assessment of material available on record reflects that the complainant in her statement before the police has stated that she was residing with applicant Ali Sher as his wedded wife and their nikah was solemnized on telephone; that subsequently an agreement of compromise was executed between them which was not implemented and she was ousted from the house by the applicant. In her said statement, she also alleged maltreatment and no maintenance being ever paid by applicant, however, she had not produced nikahnama or any evidence in this regard. Admittedly, there is no independent witness of the instant incident and allegations against applicant requires further probe into the matter. Moreover, a mistaken relief of bail may be repaired by convicting the accused, if proved guilty but no proper reparation can be offered from his unjustified incarceration, albeit, his acquittal in the long run. Reliance is placed on the case of ZAIGHAM

ASHRAF versus The STATE and others (2016 SCMR 18). Applicant is behind the bars since 09.10.2019 and still trial has not been commenced. Applicant is no more required for any purpose of investigation nor the prosecution has claimed any exceptional circumstances, which would justify keeping the applicant behind the bars for an indefinite period. Keeping in view the peculiar circumstances of instant case, I am of the view that scale tilts in favour of the applicant for grant of bail as no useful purpose is likely to be served with further detention of applicant pending determination of his guilt. Under these circumstances, applicant has made out a case calling for further inquiry as envisaged under section 497(2), Cr.P.C.

6. In view of above, the bail application was allowed and the applicant was granted bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R Bond in the like amount to the satisfaction of trial court by my short order dated 17.08.2020 and these are the reasons of the same.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the trial court while deciding the case of applicant on merits.

JUDGE

g

