

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

Cr. Bail Application No.S-763 of 2020

Cr. Bail Application No.S-764 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicants:	Through M/s Poonjo Rupani & Muhammad Bachal Pariyar advocates
Complainant:	In person
State:	Through Ms. Rameshan Oad, APG
Date of hearing:	18.09.2020
Date of Decision:	18.09.2020

ORDER

ABDUL MAALIK GADDI, J:- By this common order I intend to decide the fate of both captioned bail applications, as they arise out of same crime and incident.

2. Both captioned bail applications have been directed against the order dated 01.04.2020, whereby bail plea of the applicants was rejected by the Trial Court in present crime bearing FIR No. 70 of 2020 registered at PS Badin u/s 365-B, 376(ii), 458, 343 & 35 PPC.

3. The allegation against the applicants/accused, according to FIR, is that on 25.02.2020 at 12:30 hours, they alongwith co-accused Muhammad Khan trespassed into the house of complainant/victim Mst. Anam and by show of force abducted her in Mehran Car bearing No.BPL 595 and brought her at the Otaq of one Deedar Chandio, where applicants/accused Zulfiqar and Sikander had committed zina with her and also kept her in wrongful confinement for four days and on 28.02.2020, they left her outside her house, hence present FIR.

4. Learned counsel for the applicants/accused submits that applicants/accused are innocent and they have not committed any offence as alleged in the FIR and the same is the result of enmity existing between the parties; that there is no eyewitness as well as independent witness of the alleged incident though the village where complainant/victim is residing consisting on about 20/25 houses; that there is a delay of about 17 days in lodgment of FIR without any plausible explanation; that there is

no ingredient of alleged rape in the provisional medical certificate; that as per provisional medicate certificate there is no violence or injury on the body of complainant/victim; that co-accused Deedar Chandio has been granted bail by the Trial Court, whose case is on same footings as that of present applicants/accused, hence applicants/accused are also entitled for same relief. He lastly prayed that applicants/accused may be granted bail. In support of his arguments he has relied upon the case of RAJA KHALID PERVAIZ vs. THE STATE reported in 2009 YLR 2068 Lahore.

5. Complainant/victim present in Court has specifically pointed out towards applicants/accused Zulfiqar Ali and Sikandar that they had committed zina with her due to enmity with her husband. She further submits that applicant/accused Afzal Ali was also available there and is involved in her abduction. However, she while weeping in Court submits that she has no objection only to the extent, if the applicants/accused may be granted bail by this Court.

6. On the other hand learned APG vehemently opposed the grant of bail and submits that applicants/accused have committed heinous offence, as such they are not entitled for extraordinary relief of pre-arrest bail. So far as, no objection recorded by the complainant/victim is concerned, learned APG submits that the offence for which the applicants/accused stand charged is non-compoundable and so also the same is heinous one and falls within the prohibitory clause of Section 497 Cr.PC. She further submits that applicants/accused are nominated in FIR by the complainant/victim with specific role and the version of complainant/victim has also been supported by the prosecution witnesses in their respective 161 Cr.P.C statements, hence these bail applications are liable to be dismissed.

7. Heard the learned counsel for parties and perused the case papers, so made available before me.

8. From the perusal of FIR, it appears that present applicants/accused are nominated in FIR by the complainant/victim with specific role. As far as delay in registration of FIR is concerned, it reflects from the record that initially SHO of concerned Police Station has refused to lodge the FIR of complainant, hence she moved an application u/s 22-A & B Cr.P.C before the Session Judge/ Ex-Officio Justice of Peace Badin, which was disposed of vide order dated 12.03.2020 with certain directions and on the very

same day viz: 12.03.2020 the present FIR was lodged, hence apparently the delay has plausibly been explained.

9. As regards the no objection recorded by complainant/victim before this Court, since the present crime is heinous one and falls within the prohibitory clause of Section 497 Cr.PC so also the same is also non-compoundable, therefore, the no objection extended by the complainant/victim has no value in the eyes of law. Further mere recording no objection or filing affidavit to that extent would not attract the expression "further inquiry" nor would it amount to two versions; evidentiary value of such evidence should be left to be determined by the Trial Court at trial. Reliance in this regard is placed on PLD 1990 Supreme Court 83 (Mst. BASHIRAN BIBI vs. NISAR AHMAD KHAN and others) and 2013 P. Cr.L.J 904 Sindh (ZAHID HUSSAIN and another vs. THE STATE).

10. With regard to contention of learned counsel that case of co-accused Deedar Chandio, who has been granted bail by the Trial Court, is on same footings as that of present applicants/accused; I am not impressed with this argument of the learned counsel for the applicants/accused for the reasons that the case of co-accused Deedar Chandio is on different footings as that of present applicants/accused, therefore, this ground is not helpful for present applicants/accused.

11. Nothing has been placed on record, which may shows that case of the applicants/accused requires further inquiry. Accordingly, both captioned bail applications are dismissed. Resultantly orders dated 13.08.2020, whereby applicants/accused were granted pre-arrest bail are re-called.

12. Needless to mention here that observations made hereinabove are tentative in nature and shall not affect the merits of the case before the Trial Court.

13. Before parting with the order, it is shocking to note that SHO of PS Badin has not even bothered to record the statement of complainant/victim for registration of FIR in such type of heinous offence, which has compelled the victim to approach the concerned Ex-Officio Justice of Peace. As also it is informed by the learned APG that despite her directions IO of the case (*Inspector Muhammad Anwar Leghari of PS Badin*) failed to appear with police papers today before this Court. She has also

informed that final challan has not yet been submitted by the IO despite expiry of stipulated period. Accordingly, SSP Badin is directed to look into the matter and take necessary action against above named IO for his failure to appear as well as to submit final challan of the case. Let a copy of this order be sent to District Judge as well as Judicial Magistrate concerned for information. A copy of this order also be sent to SSP Badin for information and compliance.

JUDGE

Sajjad Ali Jessar