

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 787 of 2020

Sheeraz son of Qurban Ali Tunio.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 717 of 2020

Shahzaib son of Hajan Ali Lukh.....Applicant

Versus

The State.....Respondent

Criminal Bail Application No. 625 of 2020

Wajid son of Manzoor Ahmed.....Applicant

Versus

The State.....Respondent

Date of hearing & Short Order : **20.07.2020.**

Mr. Qaim Ali Memon, advocate for applicant in BA No.787/2020
 Mr. Ashfaq Hussain Abro, advocate for applicant in BA No.717/2020
 Mr. Nazir Ahmed Shar, advocate for applicant in BA No.625 of 2020
 M/s. Wazeer Hussain Khoso & Nisar Ahmed Dogar, advocate for complainant
 Syed Meeral Shah Bukhari, Addl. PG for State a/w ASP Zahida Parveen Clifton and DSP Raza Mian

ORDER

Fahim Ahmed Siddiqui, J: Since all the above bail applications deal with the same case, therefore, it will be appropriate to decide them with one and the same order. By filing these applications, applicants Sheeraz son of Qurban Ali Tunio (B.A. # 787/2020), Shahzaib son of Hajan Ali Lukh (B.A. # 717/2020) and Wajid son of Manzoor Ahmed (B.A.

625/2020) intend to get themselves released on bail in a custody case. The case against the applicants was initiated through F.I.R. No.71/2020 lodged at P.S. Sachal under Sections 365-B & 34 PPC. The learned Additional Sessions Judge-V, Malir (Karachi) has already declined their bail pleas through an order dated 27-04-2020, hence instant bail applications have been filed.

2. I have heard the arguments advanced by the counsel representing applicants and complainant as well as submissions of learned prosecutor appearing for the state. From whatever articulated and placed before me, I have observed as under:

- (a) The complainant, in his report, has leveled allegations of the abduction of his minor daughter namely Kainat aged about 13 years by some unknown persons while she was returning back from school. It is also alleged by the complainant that the kidnappers have abducted her daughter with the intention to commit rape.
- (b) It is worth noting that the complainant has not mentioned the name of any person as a suspect, which belies any animosity between the complainant and the applicants.
- (c) After lodgment of F.I.R., the matter was investigated and the names of the applicants were deciphered during the course of the investigation as the culprits.
- (d) The investigators reached up to the applicants by using different techniques of digital data Analysis and Call Detailed Record (CDR) and virtual perimeter of geo-fencing.
- (e) The investigators have collected the record of mobile phones, which were used by the accused persons including the applicants as well as the victim girl.

- (f) The victim was recovered from the possession of co-accused Kamran Shah in a condition that her limbs were tied and her mouth was shuttered by stuffing and tying with cloths.
- (g) After recovery, the victim in her 161 CrPC's statement implicated all the accused persons as culprits and she leveled allegations that all of them are involved in harassing and blackmailing by showing her pictures with digitally edited nudity.
- (h) During the course of the investigation, certain obscene photographs, etc. of victim girl were recovered from the mobile phones of the applicants, and the investigators have so far collected material which indicates that these pictures of the victims were transmitted to each other through cyberspace.
- (i) The mobile phones of the accused persons were seized by the investigators from the accused persons at the time of their arrest, and after forensic audit cinematographic materials of the victim were recovered, which is sufficient to connect the applicants with the commission of the alleged offence.
- (j) It is alleged by the complainant that the victim is a minor aged about 13 years while the opinion of investigators is that she might be 17 or 18 years of age. Nevertheless, as per the definition of Juvenile Justice System Act, 2018 for the operation of criminal laws, she is a minor as such she has yet not reached the age of consent.
- (k) In such a situation, even if she was persuaded to give consent for such pictures, it will not improve the defence case as in sexual assault and sexual

harassment cases, the consent of minors is immaterial.

- (l) The contention regarding elopement and marriage of victim with Kamran Shah is also not significant being the minor age of victim as well as the mode or recovery of the victim itself sufficient to belie a consent marriage.
- (m) The Nonrecovery of mobile phones remained in the use of the victim is quite comprehensible as the victim remained in the hands of the principal accused. In such types of cases, the accused persons first of all deprived the victim of the mobile phones used by her, so that she may be disconnected from her relatives and friends.
- (n) In the instant case, the accused must have taken away those mobile phones, which were allegedly given by the accused, in order to destroy a piece of evidence against them.
- (o) So far as to the contention of learned counsel for the applicant Sheeraz regarding her minority is concerned, no convincing material could be brought on record in this respect. Besides no inquiry by the investigators and/or Court below was made regarding juvenility of the accused as per provision of Section 8 of the Juvenile Justice System Act, 2018.
- (p) It is also admitted by the counsel for applicant Sheeraz that so far no application was moved before the Court below for declaring him juvenile but he says that such application was filed before investigation officer. The investigation officer present in court states that she could not find any such document in the

investigation file received by her from previous I.O. Besides, the applicant Sheeraz is brought from adult jail and not from the juvenile jail.

- (q) The other grounds taken during course of arguments regarding identification parade, non-recording of statement u/s 164 CrPC are concerned, my observation is that these are rules of prudence but not mandatory while the same comes under deeper appreciation, which is not permissible in bail matters.

3. In view of the above observation, I am of the considered opinion that at least at this stage, the applicants are not entitled to any concession, as such their bail pleas were declined through my short order dated 20-07-2020 and these are the reasons for the same.

4. Before parting, I would like to make it clear that all of the above observations are purely tentative in nature and will have no bearing upon the trial of the applicants in any manner.

J U D G E