

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. B.A. No.S- 800 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection.
2. For hearing of main case.

20.10.2020

Applicant is present on interim pre-arrest bail.
Mr. Afzal Karim Virik, Advocate for applicant.
Ms. Sobia Bhatti, A.P.G, Sindh.
Complainant / victim Mst. Aysha present in person.
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ZULFIQAR AHMAD KHAN, J.- Through this bail application, applicant Asad Ali seeks pre-arrest bail in Crime No.62 of 2020 registered at Police Station Digri for offence under sections 376, 493, 344, 506(ii), 34 PPC. Earlier the applicant / accused preferred his bail application before the trial Court which by means of order dated 17.08.2020 was declined hence he has raised his bail plea before this Court.

2. As per F.I.R, prosecution case is that complainant / victim obtained Khulla through Court from her husband in 2018 and was residing alone. It is further stated that she was working in Beauty Parlor when she was contacted by accused. For the last one year accused kept the complainant in a rented house in Jilani Shah Mohallah where he committed zina with her on the pretext of contracting Nikah with her and having been forced by the complainant to marry her, uncle of the accused namely Zeeshan issued threats of dire consequences to her, hence she lodged the instant F.I.R.

3. Learned counsel for the applicant submit that he is innocent; that the F.I.R. is false and fabricated and he has falsely been implicated in this case; that the F.I.R. is delayed by one year which has not been explained plausibly; that the complainant is a clever lady and she forced

applicant to contract marriage with her which was refused by applicant; that the incident is unseen and no positive medical evidence is available on record; that guilt of the applicant can only be determined at trial and at this stage, case of the applicant requires further inquiry, hence interim pre-arrest bail already granted to him be confirmed.

4. Learned A.P.G as well as complainant / victim, who is present in person, have vehemently opposed this bail application on the ground that serious offence of rape has been committed by the applicant / accused which has been confirmed by complainant present in court.

5. Arguments heard and record perused.

6. No doubt there is delay in lodging of FIR but in the FIR complainant has clearly stated that after obtaining Khulla from her first husband in the year 2018 she was residing alone in her house and was working in a Beauty Parlor when the present applicant by keeping her on false hopes of marriage, kept her in a rented house and committed Zina with her for about one year. From the perusal of rejection order passed by the trial court, it appears that statement of the landlord was also recorded in whose house the complainant / victim was kept by accused and he affirmed such position. The statement of victim is also available on record which connects the applicant in the commission of such a heinous offence. The applicant has committed a serious offence of rape while keeping the victim on false hopes of contracting marriage. Per learned counsel DNA report is in negative but it is not a recent report and the alleged offence of Zina has not been committed recently hence no reliance can be made on such report. Moreover, no enmity whatsoever has been alleged by applicant against the complainant / victim as to why she would implicate him in the case in hand nor any document in this regard has been brought on record. Applicant /

accused is nominated in FIR with specific role. A simple and reputed lady cannot allege such type of serious allegations against any strange person because there would also be a question of her honour and life. Applicant / accused was found guilty during investigation. Applicant has committed a heinous offence which carries capital punishment and does not fall within the prohibitory clause of Section 497 Cr.P.C. No malafide has been shown on the part of police or complainant which may show that applicant has been implicated falsely. Ingredients for grant of pre-arrest bail as enshrined by Honourable Supreme Court of Pakistan in its numerous judgments are lacking in the case in hand hence the case of applicant Asad Ali is not covered by the guiding principles laid down by Honourable Supreme Court of Pakistan in the case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 Supreme Court 427). Consequently, instant bail application is dismissed and the interim pre-arrest bail earlier granted to the applicant / accused vide order dated 20.08.2020 is hereby recalled.

7. Needless to mention that the observations made hereinabove are tentative in nature and the trial Court shall not be influenced upon by any of them while proceeding with and deciding the case on merits.

JUDGE

Tufail