

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr.B.A.No.S-869 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
For hearing of main case.

30.11.2020.

Mr. Noorul Amin Sipio, Advocate for applicant.
Ms. Sobia Bhatti, A.P.G for the State.
Mr. Nasrullah Unar, Advocate for the complainant.

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Irshad Ali Shah J:- It is alleged that the applicant with rest of the culprits in furtherance of their common intention committed sodomy with PWs Shahzim Khan and Nisar, for that the present case was registered.

2. The applicant on having been refused post arrest bail by learned VIII Additional Sessions Judge, Hyderabad has sought for the same from this court by way of instant application under section 497 Cr.P.C.

3. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant otherwise he was not available at the place of incident and at the time of incident; the F.I.R has been lodged with delay of about five days; co-accused Akbar Ali, and Amir alias Papoo have already been admitted to bail by learned Trial Court and applicant is custody since four months. By contending so, he sought for release of the applicant on bail on point of further inquiry.

4. Learned D.P.G for the State and learned counsel for the complainant have opposed to grant of bail to applicant by contending that he has remained in absconsion for about five years.

5. I have considered the above arguments and perused the record.
6. The F.I.R of incident has been lodged with delay of about five days; such delay having not been explained plausibly could not be overlooked, it reflects consultation. Co-accused Akbar Ali and Amir alias Papoo with utmost similar role have already been admitted to bail by learned Trial Court. In that situation, it would be unjustified to refuse bail to the applicant on point of absconsion alone.
7. In case of ***Mitho Pitafi vs. The State (2009 SCMR 299)***, the Honourable Apex Court has held as follows;

“---S. 497---Penal Code (XLV of 1860), Ss.302/324---Constitution of Pakistan (1973), Art.185(3)---Bail, grant of--Co-accused was released on bail by the Trial Court, but the concession of bail was declined to the accused petitioner on the ground that he was fugitive from law---High Court as well as the Trial Court had rejected the bail of petitioner on account of his absconsion and not on merits---Validity---Bail could be granted, if accused had good case for bail on merits and mere his absconsion would not come in the way while granting him bail---High Court had not appreciated the facts and circumstances of the case in its true perspective while declining bail to the petitioner---Petition was converted into appeal and same was allowed---Impugned order passed by the High Court was set aside and the petitioner was directed to be released on bail, in circumstances.”

8. In view of above, the applicant is admitted to bail subject to his furnishing solvent surety in the sum Rs.50,000/- (rupees fifty thousand) and PR bond in the like amount, to the satisfaction of the learned trial Court.
9. The instant bail application is disposed of accordingly.

JUDGE