

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.747 of 2020

Applicant : Asad S/o Muhammad Sabir
Through Mr. Irfan Aziz, Advocate

Complainant : None present.

Respondent : The State
: Through Mr. Khadim Hussain
Addl. PG, Sindh

Date of hearing : 31.08.2020

Date of order : 31.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, the applicant/accused seeks post-arrest bail in Crime No.202/2020 registered under Sections 342, 376, 337-A(i), 34 PPC at PS Sachal, after his bail plea has been declined by the 5th Additional Sessions Judge, Malir Karachi vide order dated 16.04.2020.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. None present for the complainant. Though notice was issued she is called absent. The instant bail application was presented on 19.05.2020 first time fixed on 21.05.2020. Notices were issued to the complainant as well as Prosecutor General, Sindh and in compliance of Court's directions, notices were issued through Bailiff as well as registered A.D. but the complainant failed to appear. The learned counsel for the applicant requested that the bail application is pending

since long and he has requested that he may allow arguing the matter. Request allowed.

4. Learned counsel for the applicant/accused submits that applicant/accused is innocent and has falsely been implicated in this case; that both the ladies were committing theft in the house of the applicant/accused, as such, they have involved the applicant/accused in this case; that as per contention of the FIR, the complainant has stated that she was abducted in the car where one unconscious lady was already available, who was thrown there but in 164 Cr.P.C., statement, lady victim Mst. Naseem stated that she was present in the house where police raided and shifted her in the hospital; that there is a contradiction between the statement of complainant and victim; that the DNA report received from Sindh Forensic DNA and Serology Laboratory is **Negative**. He lastly prays for grant of post-arrest bail to the applicant/accused.

5. On the other hand, learned Addl. PG has vehemently opposed for grant of bail to the applicant/accused and states that DNA report is not to be considered at bail stage as in the instant case, medical evidence is supporting the ocular version of the complainant; hence the applicant/accused is not entitled for concession of bail.

6. I have heard the learned counsel for the parties and perused the material available on record. The case of the prosecution is that on the day of the incident, the complainant while going on feet when she reached near Punjab Bus Stop one car stopped in her side where two persons captured her and put her into the car, in the car one girl was already lying unconscious after seating said girl was thrown out and she was brought at flat where she was tortured by said person and committed zina three-four times

and made naked photos and videos, thereafter she lodged the FIR. Later on, she came to know her name is Mst. Naseem. Police recorded the statement of victim Naseem and produced her before the Magistrate for recording her statement under section 164 Cr.P.C. in which she has stated that on 03.03.2020 at 0900 am after completing work from the houses one Khalid Aman @ Pappoo came there and asked would you like to have work of Masi then she accompanied with him at his flat where she was tortured and committed zina with her. Khalid Aman and his companion/present applicant Asad also committed zina with her then she became conscious meanwhile police reached there and opened the door but the accused run away. Police brought her police station and shifted into the emergency where she was medically examined. The story narrated by the complainant is quite different from the statement of victim Mst. Naseem recorded before the Magistrate. Hence, both are contradictory to each other.

7. Further, the name of the applicant/accused does not find a place in the FIR nor allegation against him that he has committed zina with the complainant. After the incident, both ladies were produced before the women medical officer and they were examined virginal swabs were obtained for DNA report along with their shalwar kameez. As per DNA report, no semen was observed on the shalwar kameez chadar and banyan of Mst. Naseem and Mussarat Shaheen. No semen material was identified on a virginal swab of Mst. Naseem and Mst. Musarrat Shaheen, therefore, no DNA analysis was performed. The ocular evidence does not find support from the DNA analysis hence the case of the applicant/accused becomes a case of further enquiry.

8. The contention raised by learned Addl. PG that DNA report requires deeper appreciation and cannot be considered

at bail stage is not justified in the bare reading of Section 156 (C) Cr.P.C. (Sindh Amendment Act), 2017 which reflects that in the case involved in the rape the DNA testing of the rape victim shall be mandatorily conducted by the police officer through the laboratories recognized by the government of Sindh and the report received from the Sindh Forensic DNA Serology Laborite is as **Negative**. It is appropriate to reproduce the same hereunder:

**“156-C. Mandatory DNA Testing in Rape cases.
In the case involving the offence of rape-**

(a) the DNA testing of the rape victim shall be mandatorily conducted by a Police Officer through the Laboratories recognized by Government of Sindh;

9. Further, the learned counsel for the applicant/accused pleaded *mala fide* on the part of the complainant that the applicant has been falsely involved in this case. At the bail stage, only tentative assessment is to be made, the applicant/accused is in jail, he is no more required for further inquiry/investigation. In unreported case of the Hon’ble Supreme Court of Pakistan in the case of Jahzeb Khan vs. The State through A.G. KPK and others in Criminal Petition No.594/2020; wherein the Hon’ble Supreme Court has held that:

“4..... Petitioner’s continuous detention is not likely to improve upon investigative process, already concluded, thus, he cannot be held behind the bars as a strategy for punishment. A case for petitioner’s release on bail stands made out.”

10. In view of the above facts and circumstances, learned counsel for the applicant/accused has succeeded to make out a case for further inquiry as envisaged under section 497 (2) Cr.P.C. Consequently, the instant bail application is allowed. Applicant/accused named above is enlarged on post-arrest bail subject to his furnishing solvent surety in the sum of

Rs.100,000/- (Rupees one lac only) and PR bond to the satisfaction of the learned trial Court.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE