

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.790 of 2020

Applicants : Zohaib S/o Shamim Ahmed
Through Khawaja Muhammad Azeem,
Advocate

Complainant : Shahabuddin S/o Muhammad
Hussain
Through Mr. Rashid Mehmood
Siddiqui, Advocate

Respondent : The State
Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh.

Date of hearing : 17.08.2020

Date of order : 17.08.2020

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in Crime No.137/2020 registered under Sections 365-B/376/511 PPC at PS Brigade, after his bail plea has been declined by the Additional Sessions Judge-III, Karachi East vide order dated 07.05.2020.

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. Per learned counsel, applicant/accused is innocent and has falsely been implicated in this case; that after registration of the FIR, statement of under section 164 Cr.P.C. of the victim was recorded in which she has disclosed that only the attempt was made by the applicant/accused being his old girl

friend; hence, no case is made out for committing Zina; that in cross-examination statement recorded under section 164 Cr.P.C., she has admitted that prior to this, there was a friendship between the parties and he has produced certain photographs, love letters and text messages, which were exchanged between them; that the Section 511 PPC has been inserted by the I.O. of this case; however, the offence does not fall within the prohibitory clause; that the DNA and medical report also do not support the version of the victim. He lastly prays for grant of bail to the applicant/accused.

4. On the other hand, learned counsel for the complainant as well as learned DPG have vehemently opposed for grant of bail on the ground that applicant/accused has spoiled the life of the victim and at the time of rape, she was minor and her consent was obtained by force, therefore, reasonable grounds are available on record to believe that the applicant/accused has committed the rape; that Sections 365-B and 376 PPC are very much applicable in this case; hence, he is not entitled for concession of bail. In support of his contentions, learned counsel for the complainant relies upon the following cases:

- i) Mushtaq Ahmed & another vs. The State (2007 SCMR 473)
- ii) Khuda Bukhsh vs. The State (2014 YLR 814)

5. I have heard the learned counsel for the parties and perused the material available on record. Admittedly, the applicant/accused and the complainant are neighbourers having visiting terms with each other and after registration of the FIR, the victim Fareeha was produced before the Magistrate for recording her statement under section 164 Cr.P.C., in which she has stated that the applicant/accused has tried to commit Zina but on her refusal, he left the house and in her cross-examination, she has admitted that there

was a friendship between them and subsequently, she has implicated the applicant/accused in this case. The next contention of the learned counsel for the complainant that on blackmailing, the consent of the victim was obtained by force but in this respect, learned counsel for the applicant/accused has produced so many photographs, love letters and text messages which show that there was love and affection between the parties and there was no force upon the victim for committing any attempt of Zina. Further, from the face of record, there was love and affection between the parties and the contention of learned counsel for the complainant that she was abducted and her consent was obtained by force is yet to be decided by the trial Court whether the applicant/accused has abducted her or any attempt was made for committing Zina when the evidence will be led by the prosecution. Furthermore, the ocular evidence does not find support from the medical evidence, the DNA test and chemical report are not positive, which require further inquiry in terms of sub-section 2 of section 497 Cr.P.C. The case has been challaned, the applicant/accused is in jail, he is no more required for further inquiry. 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.”

6. In view of 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/- and PR bond to the satisfaction of the learned trial Court.

7. The case laws relied by learned counsel for the complainant are distinguishable from the facts and circumstances of the case.

8. 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

Kamran/PA