

*Order Sheet*

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

**Cr. Bail Application No. S-327 of 2019.**

---

Date	Order with signature of Hon'ble Judge
------	---------------------------------------

---

- 1.For orders on office objections as flag A.
- 2.For hearing of bail application.

**26.9.2019.**

Mr.Habibullah G. Ghouri, advocate for the applicant.  
Mr. Naimatullah Bhurgri, advocate for the complainant.  
Mr. Raja Imtiaz Ali Solangi, A.P.G.

**ORDER.**

**ARSHAD HUSSAIN KHAN-J.**:- Through this bail application, Applicant Ali Raza Azam @ Sana is seeking post arrest bail in Crime No.46 of 2019 registered with Police Station Hyderi, Larkana for offences under Sections 376, 506/2 PPC.

2. The prosecution case as per FIR is that on 26.4.2019 complainant Mst. Dua Batool lodged FIR stating therein that she resides with her parents and brothers where her paternal cousin Ali Raza @Sana also resides in front of their house and about 8 months back at about 10.00 a.m Ali Raza@ Sana entered into her house when she was alone and while pointing his pistol he committed zina with her and left the house while extending her threats not to tell anybody. She further stated in the FIR that by the passage of time she became pregnant and due to growth in her body accused Ali Raza along with two women namely Mst. Rizwana wife of Nadeem, Mst. Boby wife of Shaman Gaad and her paternal aunt Mst.Fareeda wife of Johar Gaad called her (complainant) in their house where accused Ali Raza was also present. They asked her that they are taking her to hospital for treatment purpose on which she asked them let her to get permission from her family to which they refused and on 12.4.2019 said accused party took her and admitted her in Farooque Medical Centre where her operation was conducted in which a dead baby was born then the accused party returned her back to her house and left her when she was crying due to pain on which accused extended threats of murder in case she would tell anybody, hence she kept quiet. Thereafter, her parents and brother asked from her about real facts whom she disclosed the entire episode

as above and they asked her to lodge FIR which was later on registered to the above effect.

3. After registration of FIR, the investigation followed and in due course, the present applicant was arrested and sent up to stand trial where he moved bail after arrest application which was declined vide order dated 24.5.2019, giving rise to the filing of instant bail application before this Court.

4. Learned counsel for the applicant has mainly contended that the applicant is innocent and has been falsely implicated in the case. It is further contended that there is no eye witness of the alleged occurrence and all the prosecution witnesses are closely related *interse*, therefore, false implication of the present applicant is apparent in the case. Further contended that there is delay of about 8 months in lodgment of FIR that too without any plausible explanation; neither any crime weapon is recovered from the applicant nor the dead body of alleged new born baby is recovered. Thus there is nothing on the record to connect the present applicant with the commission of alleged offence and that other accused in this case have been granted bail by the learned trial Court. It is also contended that for the purposes of DNA, dead body of unborn child has been exhumed and the report in this regard is still awaited. It is also argued that final challan has not yet been submitted. On all these scores, learned counsel for the applicant urged that the prosecution case against the present applicant calls for further enquiry and the accused /applicant is entitled to the concession of bail.

5. Conversely, learned counsel for the complainant contended that the applicant has been named in the FIR with the specific role of committing zina with the complainant as well as subsequent forcible caesarean section of the complainant and removing a dead child from her womb with the help of his accomplices, hence the applicant after having been involved in such an inhuman act of ruining life of an unmarried girl of 15/16 years old by committing zina-bil-Jbr with her and killing her fetus by forcible abortion, does not deserve any leniency and while supporting impugned order he has vehemently opposed instant bail application. In support of his submissions, learned counsel for the applicant has relied upon on cases of (i) *IHSANULLAH alias SANU v. The STATE [2015 YLR 2592]*, (ii) *MAJEED alias MACHAN*

*v. The STATE [2004 YLR 1294]*, (iii) *NADEEM MASOOD v. The STATE [2015 P.Cr.L.J 1633]*, (iv) *ZAFAR ALI v. The STATE [2011 P.Cr.L.J 1964]*, (v) *BABAR ALI v. The STATE and another [2015 MLD 593]* and *MANSOOR alias GUDO v. The State [2014 MLD 377]*.

6. Learned A.P.G while adopting arguments of learned counsel for the complainant opposed the grant of bail and supported the impugned order.

7. I have heard the learned counsel for the applicant/accused, counsel for the complainant and learned Assistant Prosecutor General, Sindh for the State and have also gone through the material available on the record.

8. Perusal of the record of the case reveals that serious allegations of committing zina-bil-Jabr with complainant Mst. Dua Batool, an unmarried girl of 15/16 years old and killing fetus in her womb by conducting forcible caesarean section at Farooque Medical Centre Larkana, have been levelled against the present applicant in the FIR. Insofar as the false implication and delay of 8 months in lodgment of FIR is concerned, there is nothing on record to show that there existed any enmity or even any sort of controversy between the complainant or her family and the applicant/ accused. Even otherwise looking to the statement of complainant that she was constantly threatened of her murder by the applicant in case she would disclose the factum of rape to anybody on which due to apprehension of her life, she remained silent until her pregnancy and forcible caesarean section was exposed to her family, therefore, delay in such like cases is not material but natural. Besides, primarily the admit card of Farooque Medical Centre, Larkana, in the name of complainant/victim also substantiate the version of the complainant taken in her FIR. Furthermore, the contention of the applicant that he has been charged falsely with ulterior motive is also misconceived, because it is not possible for an unmarried girl to falsely implicate the accused in such an offence, which could remain a stigma not only for her life, but also for the whole family. Moreover, the offence of Zina involving moral turpitude destroys the entire psychology of a woman/victim by putting her and her family to public shame. It is a stigma with which her whole family

has to face with and is the most hatred crime. The offence of Zina is offence not against the individual only but it is also against the good conscience of the society. Scanning of the record reveals that the complainant in her statement has fully implicated the applicant. The false implication of applicant/accused by the victim without any cogent reason and sufficient cause has not been asserted. It is well settled that for deciding a bail application the court has to make the tentative assessment and deeper appreciation of evidence is not required. In this respect reliance can be placed on the cases of SALEH MUHAMMAD v. The STATE [PLD 1986 SC 211] and The STATE v. ZUBAIR and 4 others [PLD 1986 SC 163].

9. Insofar as the report of DNA is concerned, non-availability of such report does not entitle the applicant for the concession of bail. Report may be relevant but not the sole criteria for the grant of bail. In the similar circumstances, the Honourable Supreme Court of Pakistan in the case of MUHAMMAD NAVEED v. The STATE [2000 SCMR 150] refused leave to appeal against the bail dismissal order.

10. The case laws relied upon by the learned counsel for the complaint supports the stance of the complainant in the case.

11. In view of the above position on the facts and law coupled with the dictum laid down in the cases referred to above, at this stage, the present applicant, being involved in such a heinous offence which falls within the ambit of prohibitory clause of section 497, Cr.P.C., has failed to make out a case for concession of bail and as such the instant bail application is dismissed. However, the applicant may repeat his bail application before learned trial court after the material evidence is brought on the record, if creating a fresh ground for bail.

12. Needless to state that the observations made herein are tentative in nature and only for the purpose of instant bail application and shall not influence the trial court while deciding the case.

JUDGE