

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 91 of 2019

Date	Order with signature of Judge
<u>For hearing of main case.</u>	
Heard on	: 3 rd July, 2019
Decided on	: 16 th September, 2019
For Applicant	: Mr. Ahteshamullah Khan, Advocate.
For respondent No.1:	Mr. Muhammad Naeem Memon, Advocate.
For State	: Ms. Rubina Qadir, D.P.G.

Kausar Sultana Hussain, J:- Through instant Application for cancellation of bail, under Section 497(5) Cr.P.C, applicant/complainant Mst. Lubna Hanif seeks cancellation of post arrest bail granted to the accused Mufti Muhammad Tariq Ilyas son of Mirza Ilyas Ahmed Baig in Crime No. 107 of 2017, registered at PS Al-Falah, Karachi under Section 376, 506-B/34 PPC. The said plea was raised by her before the learned trial Court but her request was turned down vide order dated 20.12.2018. The case has been challaned by the police and the same is now pending for trial before the Court of learned X-Additional Sessions Judge, Karachi (East) (The State versus Mufti Muhammad Tariq Ilyas).

2. Facts of the application are that the respondent No. 1/accused Mufti Muhammad Tariq Ilyas was challaned in offence under Section 376/506-B, PPC and during the proceedings of the case, he had moved an application for pre-arrest bail under Section 498 Cr.P.C before this Court and vide order dated 8.7.2017 ad-interim pre-arrest bail was granted to the respondent/accused, which was later re-called on merits, vide order dated 27.7.2017 and respondent/accused was arrested. After that the respondent/accused has moved three bail applications under Section 497 Cr.P.C for his release, out of which two bail applications were rejected by

the learned trial Court, vide orders dated 7.10.2017 and 13.3.2018, while his third bail application moved on 10.5.2018 was allowed, vide order dated 2.6.2018; considering the facts that first bail application of the respondent/accused was rejected prior to record evidence of the witnesses and second was dismissed after recording evidence of the complainant only. In respect of the recalling order passed by this Court on pre-arrest bail application of the respondent/accused, the learned trial Court was of the view that it was pre-arrest bail not after arrest. I have gone through the order passed by this Court on pre-arrest application of the respondent/accused and found that it was rejected on merits. It is well settled principle of law that "if pre-arrest bail is declined on merits and not simply on account of lack of mala-fides, than post arrest bail can also not be granted". The learned trial Court itself did not consider two bail applications of after arrest on merits. However, the third bail application of the respondent/accused was considered and allowed being having fresh grounds i.e. delay in lodging FIR, medical examination was conducted after about one year of incident and no D.N.A was conducted. The learned trial Court also discussed in its bail order dated 2.6.2018 the minor contradictions in evidence of prosecution witnesses. Thereafter, the complainant moved an application for cancellation of said bail order before the learned trial Court, which was declined, vide order dated 20.12.2018, hence the complainant moved this application for cancellation of bail before this Court. The grounds mentioned above have already been taken by the respondent/accused in his previous bail applications and also discussed in those orders passed earlier on bail post arrest applications, except the submission of the character certificate of the respondent/accused in shape of statement signed by the vicinity people, however, this type of statements cannot be treated as plea for bail because it was not the part of evidence.

3. At the very outset the learned counsel for applicant/complainant duly assisted by the learned D.P.G argued that the impugned order dated 20.12.2018 passed by the learned trial Court is patently illegal, erroneous, and without reasoning and non-speaking order, which is liable to be set aside and to cancel the bail granted to the respondent No.1/accused; that the name of the accused has been mentioned in the FIR with specific role and allegations; that the medical evidence also supports the case of the prosecution but the learned trial Court failed to apply her judicial mind and to consider the material available on record; that PWs have fully supported the complainant version in their statements recorded under Section 161 Cr.P.C; that the accused is issuing threats of dire consequences to the applicant/complainant and he is misusing the bail as he is trying to temper the evidence of prosecution. The learned counsel for the applicant/complainant has further argued that earlier bail applications under Section 498 and 497 Cr.P.C dated: 27.7.2017, 17.10.2017 & 13.3.2018 had been dismissed by the High Court and Trial Court, but the third bail application under Section 497 Cr.P.C. dated 10.5.2018 was allowed, vide order dated 2.6.2018, while no fresh grounds have been raised by the accused for his release.

4. The learned D.P.G for the State supported the version of the learned counsel for the applicant / complainant. The applicant / complainant was also present before the Court at the time of arguments and she has disclosed the facts of incident loudly and prayed for justice by saying that she used to pay respect to the accused being her teacher and always treated him as her father, but the accused ruined her life by taking benefit of her trust upon him. The complainant has further stated that except her the respondent No. 1 / accused had also ruined life of nine other female students of Aalma course and one boy, hence the impugned order dated 20.12.2018 passed by the learned trial Court may be set aside and cancelled the bail of the

accused. She shown apprehension that he will ruin life of other girls, if he be remained on bail.

5. Learned counsel for the respondent No. 1/accused has mainly argued that the respondent / accused is innocent and he has been falsely implicated by the complainant party with some ulterior motives; that there is a delay of about nine months in lodging of FIR without any plausible explanation of such delay; that the medical examination was conducted after about nine months of alleged incident, as such the same is not reliable and it cannot be said with certainty that the respondent No.1/accused is responsible for the loss of virginity of the applicant / complainant; that the respondent No.1/accused is founder and Chairman of a Trust, which is the managing body of Masjid Ali Murtaza and Madarssa Jamia Majeedia as he had constructed the said Masjid and Madarssa from his own sources and the applicant/complainant is playing in the hands of those, who are opponent of the respondent No.1/accused and who are willing to remove the respondent No.1/accused from the said Masjid & Madarssa and they are using complaint for this purpose, in this regard he has also filed a trust suit as well as a suit for damages against the applicant / complainant. He also submitted that the witnesses of the case are planted witnesses and the same are having a grudge against the respondent No.1/accused. He also submitted that after grant of bail he has not misused the concession of bail and regularly attending the learned trial Court at the time of hearing. He prayed that the order passed by the learned trial Court is in accordance with law and is correct, therefore, the instant Criminal Misc. Application may be dismissed.

6. After hearing arguments and perusal of police file, I am of the view that settled principles of law governing the grant of bail and the cancellation of bail substantially stand on different, footings. Bail granted to accused can be cancelled when order granting bail is perverse, fanciful or is not

consonance with law laid down by superior Courts, the order lacks in reasons or is perfunctory in nature, whimsical or the bail is either obtained through misrepresentation or suppression of facts; the concession of bail is being misused to hamper or obstruct the course of fair investigation.

7. In the instant matter one bail before arrest application of respondent No. 1/accused bearing No. 1049 of 2017 was dismissed by this Court vide order dated 18.7.2017 while observing:

“The applicant is apparently a cleric and he used to lead the daily prayers in a Mosque and it is also on the record that he was removed from the sacred responsibility on account of certain disparaging activities. It has also come on the record that the renowned Islamic scholars have also shown their disapproving remarks about the applicant. As far as the delay in reporting the incident is concerned, I am of the view that delay is common in our society in the cases of sexual offences especially when the victim is an unmarried girl. It is also revealed from the record that the complainant has earlier reported the incident to some of the persons of the locality, but she could not dare to come forward against the applicant. The applicant being a cleric must have considerable influence in the area, and certainly the same was the reason for non-reporting the incident to the police promptly. The complainant is a young girl of tender age and she is an orphan belonging to a poor family, as such she was easily targeted and victimized by the applicant. I cannot find myself in agreement with the learned counsel for the applicant that the complainant has levelled such allegation against the applicant with mala fide intention and on the instigation of his rival party. It is hard to believe that an unmarried girl will play in the hands of someone for hatching a plot against the applicant by putting at stake her own modesty and reputation.

As the allegations against the applicant are serious in nature and the prosecution has collected sufficient material against the applicant, there exists no reason of false involvement of the applicant due to ulterior motive. The complainant is a girl

and by levelling false allegation she will gain nothing but lost everything, as such the applicant is not entitled for the extraordinary concession of pre-arrest bail. Resultantly, the instant bail application fails and the order ad-interim relief dated 08.07.2017 is recalled."

8. While bail after arrest was also dismissed owing to the reasons that there was apprehension of that accused may be tempered the witnesses including the complainant, who is a girl and victim. The second after arrest bail application was declined to the accused, vide order dated 13.3.2018 owing to the reasons that prosecution was going to record evidence of remaining witnesses as till such date of order only the complainant and WMLO were examined.

9. The third post arrest bail application was allowed, vide order dated 2.6.2018 by observing that the case of accused required further inquiry as the complainant was medically examined after one year; no DNA was conducted due to laps of time; PW Abdul Hakim is pat witness of the police; prior to lodging FIR respondent/accused filed the civil suit against the complainant side in respect of Trust, and complainant claimed that on 15.8.2016 she filed the application in respect of incident, while PW Naeem Ahmed deposed that with mutual consent of his sister (mother of the complainant) he filed the application at police Station being elder of family on behalf of Mst. Lubna/complainant. The learned trial Court was also of the view that inspite of filing application of PW Naeem Ahmed deposed that due to fear of accused he stopped the proceedings. It was further observed by the learned trial Court that evidence of the complainant and her maternal uncle have been recorded and the accused is no more required for investigation and since 18.7.2017, he was behind the Bar.

10. The reasons for granting bail to accused are based on three points picked by the learned trial Court from the part of evidence of the

complainant and her maternal uncle. I have ponder over these parts of evidence of them but could not find it reasonable and liable to be considered as strong grounds for grant of bail in such type of serious nature offences. The learned trial Court has not considered this aspect of the matter that as per statement of one more victim namely Hafiz Danish Ahmed son of Shamim Ahmed recorded under Section 161 Cr.P.C, while studying in the same Madarsa, the same accused committed sodomy with him for several times after calling him at his vacant house in February and March, 2009, when he was only 11 years old boy and after that he threatened him not to disclose this to anyone but on making complaint by him to his father and uncle the accused through his accomplices threatened them. One more PW namely Syed Nadeem Hussain son of Syed Rahat Hussain in his statement under Section 161 Cr.P.C stated that he used to do work as Accountant in Madarsa during the period of 2010 to 2016 and also reside at first floor of the Madarsa alongwith his family. He stated that in July, 2016 during vacation the respondent/accused proceeded to Lahore alongwith his family but after few days he alone returned back to his house on 15.7.2016 and then continuously three days he saw that one lady wearing Burqa used to come at Madarsa at 8.00 AM and stayed till 11/12 noon with the accused in Madarsa to whom the accused used to expel from gate and then he used to bolt the gate from inside. In presence of such direct evidence, how the accused's case could be considered as required further enquiry. In my view, the bail granting order is patently illegal and factually incorrect and caused gross miscarriage of justice. Release of accused in such serious nature offences would cause lack of confidence on justice system and encourage the culprits, who are also involved in such type of dangerous activities and society would feel them insecure. *I therefore, set aside the order dated 2nd June, 2018 passed by the learned trial Court.* Order passed accordingly. However, learned trial Court is directed to conclude the trial preferably

within three months and report to this Court through learned MIT-II of this Court.

J U D G E

Faheem/PA