

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No.1428 of 2021

Date

Order with signature of Judge

For hearing of Bail Application.

13.09.2021

Mr. Riaz Ahmed Bhatti, Advocate for the Applicant.
Ms. Rahat Ehsan, Addl. Prosecutor General, Sindh.
Mr. Hussain Bux Saryo, Advocate for the Complainant.

ORDER

Muhammad Saleem Jessar, J:- Through this bail application, Applicant Anas Gulzar seeks his release on post arrest bail in Crime No.127/2021 of P.S Air Port, Karachi, under Section 365-B/34 PPC. The applicant preferred his bail plea before the first forum, which was turned down by means of order dated 05.07.2021; hence, he has approached to this Court through this Application.

2. The brief facts of the prosecution case are that on 17.05.2021 complainant Karam Din lodged FIR at police station Airport stating therein that on 16.05.2021 at 09:30 PM, his daughter namely Shama, aged about 14 years, went to a shop for buying grocery, but for sufficient time she did not return back, hence, he left the house in order to search her, but he failed to find her. However, during search he came to know that a boy of his mohalla namely Anas Gulzar along with his unknown companion enticed away his daughter with intention to commit zina with her. To such effect, present FIR was lodged.

3. Learned counsel for the applicant submits that case against applicant is of two versions, one given by the complainant in his FIR and other one given by the victim herself in her 161 as well as 164 Cr.P.C statement. He next adds that the version given by the victim is belied by the version of FIR, therefore, case against applicant requires further inquiry. He further submits that the applicant is innocent and has falsely been implicated by the complainant for some ulterior motives. In support of his contention, he places reliance upon

the cases (i) *SHAHID Versus The STATE (2017 P.Cr.L.J Note 130)*, (ii) *WAZIR ALI Versus THE STATE (2008 P.Cr.L.J 1082)*, (iii) *HAZRAT AMIN Versus The STATE and another (2020 SCMR 418)*.

4. On the other hand, learned Addl. P.G, Sindh appearing for the State, opposes the bail application and submits that the offence as alleged had occurred on 16.05.2021, whereas FIR was lodged promptly on 17.05.2021; however, alleged abductee was recovered from the possession of applicant on 20.05.2021. Later, she was examined by the Woman Medico Legal Officer on 20.05.2021 and the finding, as per opinion of WMLO, is that victim was subjected to sexual rape. In support of her contention, she places on record a copy of Medico Legal Certificate bearing No.MLO 117 dated 20.05.2021 issued by Dr. Afshan Nazli, Senior Woman Medico Legal Officer, JPMC, Karachi. As per opinion of WMLO, the abductee was subjected to sexual intercourse. Learned Addl. P.G, Sindh further submits that the alleged abductee was also produced before Judicial Magistrate-I, Malir, Karachi on 22.05.2021 where her statement under Section 164 Cr.P.C was recorded. In her 164 Cr.P.C statement, she had specifically implicated the applicant; hence, he is not entitled for bail. In support of her contention, she has placed reliance upon an unreported case of Abu Bakar @ Mohsin Ali Shoro Versus The State vide Criminal Bail Application No.S-561 of 2021 and order dated 06.09.2021 passed by this Court at Hyderabad.

5. Learned counsel for the complainant, also opposes the bail application and while adopting the arguments advanced by the learned Addl. P.G, Sindh, places reliance upon case of *GHULAM MUSTAFA and another Versus The STATE (2019 P.Cr.L.J Note 102)*.

6. I have heard learned counsel for the applicant, learned Addl. P.G, Sindh as well as learned counsel for the complainant and have gone through the material made available on record.

7. The 164 Cr.P.C. statement of the abductee is available in Court file as Annexure-D at page-49, which reveals that abductee had deposed before the Magistrate to the effect that she was taken away by the applicant on his bike and later she was administered some intoxication through cold drinks and as and when she regained her senses she found herself in a hotel and later she was secured by the police. She has specifically deposed before the Magistrate

that she has been kidnapped by the applicant. The contention of learned counsel for the applicant to the effect that case against applicant requires further inquiry on the ground of two versions carries no weight because deeper appreciation of the evidence is to be considered by the trial Court after recording evidence of the parties and only tentative assessment is to be considered at bail stage. The allegations before the prosecution, in view of the investigation, have been supported and coupled with the fact that abductee was recovered from the possession of applicant. All the PWs including victim have supported the FIR in their respective 161 as well as 164 Cr.P.C. statements; thereby have implicated the applicant with the commission of offence. All these things are sufficient to believe that applicant has prima facie been connected with commission of the offence and therefore he is not entitled for grant of bail. Consequently, instant bail application is hereby dismissed.

8. It is pertinent to mention that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the trial Court shall proceed with the trial expeditiously and conclude it within shortest possible time. The prosecution is also directed to procure its witnesses without causing any kind of delay.

9. The Criminal Bail Application is disposed of in the terms indicated above.

JUDGE

Zulfiqar/P.A