

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 841 of 2020

Date *Order with signature of Judge*

For hearing of Bail Application.

18.08.2020

Mr. Tahir-ur-Rehman, Advocate for the Applicant.

Mr. Sagheer Ahmed Abbasi, Asst. Prosecutor General, Sindh along with
ASI Muhammad Hashim of P.S SITE-A, Karachi.

Mr. Muhammad Nasir, Advocate for the Complainant.

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Muhammad Saleem Jessar, J:- Through subtitled bail application, Applicant Muhammad Hussain looks for his delivery on post capture bail in Crime No.213/2020 of P.S SITE-A, Karachi, under Section 377/377-A(1)/506/34 PPC. The bail request favored by the Applicant before the main discussion was declined by methods for Order dated 30.05.2020; consequently, he has drawn nearer to this Court through this Application.

The realities of the arraignment's case are that on 21.04.2020, complainant Mst. Zahida Bashir's child specifically Abdul Sami, matured around 17 years revealed to her that on 13.04.2020 around evening time, his neighbors Naeem Afzal alongside his companion Muhammad Hussain came at his home and removed him with them for work at Farooq-e-Azam Masjid, Metrovail, SITE Karachi behind the quarter at 11:00 P.M, from there on, they grabbed the cell phone from him and furthermore beaten him and gave some inebriating thing to him and after that they had submitted unnatural offense with them and furthermore made video of same episode. It is additionally portrayed that the denounced people coercing her child by sending video through courier as such she went to the place of said Naeem for objection, where sibling of Naeem to be specific Nadeem expanded dangers for critical outcomes. Consequently, present FIR.

Learned counsel for the applicant presents that occurrence is said to have occurred on 13.04.2020; while, report thereof, was held up by the complainant, who is mother of the casualty Abdul Sami, on 22.04.2020, for example with a postponement around 9 days and no conceivable clarification has been outfitted by the arraignment for such an over the top deferral. He next presents that per

temporary medico legitimate endorsement gave by MLO Dr. Abdul Jabbar Memon (Annexure-C, accessible at page-29 of the Court document), he has opined in following terms;_

"Nothing could be said due to lapse of time."

Learned counsel for the applicant further calls attention to that DNA report has additionally been given by the worried as negative; consequently, body of evidence against the applicant requires further probe. On the side of his dispute, he puts dependence upon the instances of (I) HAIBAT KHAN Versus The STATE and others (2016 SCMR 2176), (ii) MUHAMMAD RAMZAN alias SHAMMA Versus THE STATE (2007 P.Cr.L.J 413), (iii) GHULAM RAZA and another Versus STATE (PLJ 200.3 Cr.C. (Lahore) 852), (iv) HAJI and another Versus THE STATE (1995 MLD 588), (v) JEHANGIR and another Versus THE STATE (2011 P.Cr.L.J 960), and (vi) MUHAMMAD UMAIR Versus MAAZULLAH and another (2020 P.Cr.L.J 653).

Then again, learned Asst. Prosecutor General, Sindh showing up for the State restricts the bail application.

Learned counsel for the complainant likewise contradicts the bail application and on the side of his conflict, he puts dependence upon the instances of (I) ASIF AYUB Versus THE STATE (2010 SCMR 1735), (ii) SHAHZAD AHMED Versus THE STATE through FIA Islamabad (2010 SCMR 1221), (iii) Syed LAKHAT-E-HASNAIN Versus THE STATE (2010 SCMR 855), (iv) JEHANZEB and others Versus ASIF and others (1999 P.Cr.L.J 46), (v) SHAKEEL Versus THE STATE (2000 P.Cr.L.J 313), (vi) ABDUL REHMAN Versus ALI SHER and others (2000 P.Cr.L.J 33), (vii) JUMA KHAN Versus THE STATE (2000 P.Cr.L.J 639), (viii) MUHAMMAD AZAM Versus THE STATE (2009 YLR 193), (ix) MUHAMMAD ANWAR Versus The STATE and another (2014 P.Cr.L.J 628), (x) SHAUKAT Versus THE STATE (1984 P.Cr.L.J 179), (xi) 2001 P.Cr.L.J 503 and (xii) 2013 YLR 714.

Heard contentions and examined the record. In fact, the offense is concealed and FIR is deferred for around 9 days for which no conceivable clarification has been outfitted by the arraignment for such an over the top postponement. In spite of the fact that the FIR was stopped on 22.04.2020; notwithstanding, casualty (victim) was inspected before the Magistrate under

Section 164 Cr.P.C on 25.04.2020. In her FIR, complainant has explicitly expressed that according to adaptation of casualty/victim he was removed by his neighbors to be specific Naeem Afghan and Muhammad Hussain. Per FIR, he went with to them with no dissent. In his 164 Cr.P.C proclamation, he has dismissed not quite the same as the substance of FIR. Medico legitimate proof is likewise not satisfactory because of pass of time. DNA has been given as negative even temporary medico legitimate declaration doesn't show any viciousness on the specific piece of body of the person in question. If there should be an occurrence of HAIBAT KHAN (Supra), Honorable Supreme Court of Pakistan while managing indistinguishable issue, has seen in the accompanying terms;_

“.....we have observed that the FIR in this case had been lodged with a delay of 14 days, the Medico-legal Certificate issued in respect of the alleged victim namely Naheed Bibi (aged about 10/11 years) did not depict any mark of violence on any part of her body, the Chemical Examiner had submitted his report in the negative in respect of the vaginal swabs of the alleged victim and the report of the D.N.A. test had been received in the negative. A perusal of the FIR shows that none of the eye-witnesses mentioned in the same had in fact witnessed the alleged rape himself and it was the minor victim herself who had disclosed to them that the petitioner had committed some highhandedness with her. In view of the above mentioned material available on the record it could well be that the case in hand was merely a case of an attempt which had remained abortive or a case of mere preparation. It is not disputed that the investigating agency has already concluded that the allegation leveled against the petitioner is false and that upon completion of the investigation a report has already been submitted seeking cancellation of the FIR. For all these reasons we have found the case against the petitioner to be a case calling for further inquiry into his guilt withint the purvieuw of subsection (2) of section 497, Cr.P.C.....”

In fact, the clinical proof isn't in consonance with the claims leveled by the indictment against candidate other than the offense is concealed. It is all around settled guideline of law that if a smallest uncertainty emerges at bail stage, advantage of the equivalent must be stretched out for the charged.

As far conflict raised by learned advice for the complainant is worried, there is opposing rendition among complainant and the person in question and out of two adaptations which one is right, is an inquiry, which is yet to be controlled by the preliminary Court subsequent to recording proof of the gatherings. The law depended upon by counsel for the complainant is recognizable from the realities and conditions of present case. Simple certainty

that challan of the case has been recorded, is no ground for retaining concession of bail to a blamed if in any case conditions assemble around would build up the justification for presenting his defense to be of further enquiry.

For the previous reasons, I am of the supposition that candidate's/applicant's case is simply secured by subsection 2 to Section 497 Cr.P.C, and requires further enquiry. Appropriately, moment bail application is thus permitted; candidate Muhammad Hussain child of Abdul Ahad, will be delivered on bail subject to outfitting his dissolvable guarantee in the aggregate of Rs. 100,000/ - (Rupees One Lac Only) and PR Bond in the like add up as per the general inclination of learned trial Court.

It need not to emphasize that the observation(s) made hereinabove is/are speculative in nature and will not preference the situation of either party during trial. Be that as it may, the educated preliminary Court may continue against the Applicant, in the event that he will be found abusing the concession of bail.

This Criminal Bail Application is allowed.

JUDGE