

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 2002 of 2019

Date	Order with signature of Judge
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For hearing of Bail Application.

03.02.2020

Mr. Tahir-ur-Rehman, Advocate for the applicant.
Mr. Hussain Bux Baloch, Addl. Prosecutor General, Sindh.

ORDER

Muhammad Saleem Jessar, J:- Through this application, applicant Muhammad Fayyaz seeks his release on post arrest bail in Crime No. 256/2019 of P.S Soldier Bazaar, Karachi, under Section 376 PPC.

Despite notice, no one is in attendance on behalf of the complainant. The process issued against her has also been returned unserved, taken on record.

As per FIR, alleged victim/complainant has alleged that she has been working as a maid (servant) alongwith her mother at a flat situated at Soldier Bazaar; where she developed friendship with Muhammad Fayyaz (present applicant). On 18.08.2019 at 08.30 P.M, accused Muhammad Fayyaz committed zinna with her forcibly. Later, she went to flat where she used to work. She narrated the fact to her mother as well her sister and shown her intention to initiate legal proceedings against Muhammad Fayyaz, therefore, instant case was got registered by her at P.S Soldier Bazaar, Karachi.

After registration of the case, investigation was carried out and after legal formalities, challan of the case was filed on 21.10.2019, which is now pending for trial before the Court VIIIth Additional Sessions Judge, Karachi (East) vide Sessions Case No.2410/2019 (re-the State Versus Muhammad Fayyaz).

Learned counsel for the applicant submits that FIR is delayed for about more than two days and it was impossible for Woman Medico Legal Officer to collect semen swabs from the body of alleged victim after two days of the incident. He next submits that even opinion of Women Medico Legal Officer as is mentioned in the Medico Legal Certificate is

very much relevant. In support of his contention, he has referred to annexure-E (available at page-29 of the Court file) and read out the opinion of the Medico Legal Officer, which reads as under;_

“On the basis of clinical examination she is not a virgin nothing can be opined regarding sexual intercourse – sample sent for chemical analysis (vaginal swabs)”

He further submits that accused has challenged medico legal certificate issued in favour of alleged victim before the Special Medical Board where she has not been appearing, therefore, Special Medical Board has put MLC under abeyance. In support of his contention, he has drawn attention of the Court towards annexure-H (available at page-37 of the Court file), which reads as under;_

“Injured Sawera D/O Ahmed has found absent for third consecutive time. The Medico Legal Certificate in respect of injured Sawera D/O Ahmed Medico Legal Certificate No.64/19 dated 21-08-2019, may be kept in abeyance/suspended and the Medico legal Certificate has lost its legal validity, till the appearance of injured before the members of the board, through proper channel.”

Learned counsel, therefore, submits that case against applicant requires further inquiry. He further submits that even she as well her witnesses are not appearing before the trial Court, therefore, applicant is languishing in jail from the day of his arrest viz.22.08.2019, without progress in his trial.

On the other hand, learned Addl. Prosecutor General, Sindh appearing for the State opposes the bail application on the pretext that alleged victim has implicated the accused in the crime even she was examined by the Judicial Magistrate under Section 164 Cr.P.C on 31.08.2019 whereby she has affirmed the contention raised by her in the FIR. He; however, could not controvert the fact that whether after about more than two days it could be possible to collect semen swabs from the body of alleged victim, he has no answer but big No.

Heard arguments and perused the record. Admittedly, the incident is said to have taken place on 18.082019 at 08:30 P.M and report thereof was lodged by the alleged victim/ complainant on 20.08.2019 at 02:30 hours and no plausible explanation has been furnished by her for causing such an inordinate delay in lodgment of the FIR. It is also

astonishing to note that complainant has not specified place where she was subjected to zina bil jabbar and after alleged offence, she normally went to the flat where she disclosed the fact to her mother as well her sister. Though she examined herself under Section 164 Cr.P.C after about 10 days of the incident before the Judicial Magistrate even she did not specify the place where she was subjected to zina bil jabbar, as alleged. Moreover, accused has challenged the medico legal certificate issued by Women Medico Legal Officer in her favour where victim has not been appearing, therefore, members as well chairman of the medical board have suspended the medico legal certificate and put it in abeyance as according to them, it has lost its legal validity. Neither the complainant has been appearing before the Special Medical Board nor before the trial Court, whereas, the applicant is in custody. Such conduct of victim shows she has no nexus or concern with her case but to keep the applicant behind the bars. It is settled law that one cannot be kept in jail for an indefinite period without progress in his trial. It is also settled law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of the charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage.

In view of the above, I am of the opinion that accused has made out a good prima facie case for his release on bail within the meaning of sub-section 2 to Section 497 Cr.P.C and requires further inquiry. Accordingly, instant bail application is hereby allowed. The applicant shall be released on bail subject to furnishing his solvent surety in the sum of Rs. 100,000/- (Rupees One Lac Only) and PR Bond in the like amount to the satisfaction of learned trial Court.

It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial. However, the learned trial Court may proceed against the Applicant, if he will be found misusing the concession of bail.

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

JUDGE