

ORDER SHEET  
HIGH COURT OF SINDH, CIRCUIT  
COURT, HYDERABAD

Cr. Bail Application No. S- 912 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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Applicants: Darya Khan and others through Mr. Nisar Ahmed Chandio, Advocate.

Complainant: Ghulam Rasool through Muhammad Imran Chaudhry, Advocate

Mr. Fayaz Hussain Sabki, A.P.G Sindh

Date of hearing & decision: 22.11.2021

**O R D E R**

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**ADNAN-UL-KARIM MEMON, J.-** The Applicant through the captioned bail application has called in question the rejection of his Anticipatory Bail Application by learned Additional Sessions Judge, Khipro vide order dated 6.10.2021. Earlier vide order dated 11.10.2021 the applicants were granted interim pre-arrest and today the same is fixed for confirmation or otherwise.

2. Brief facts of the prosecution as per FIR lodged by complainant Ghulam Rasool on 28.07.2021 at 1300 hours at PS Khipro are that on 24.07.2021 his neighbours namely Darya Khan and Muhammad Rahim in the evening time took his cousin Munwar Ali aged about 21/22 years and maternal nephew Zaffar Ali aged about 23 years towards Thadho Machine Stop for picnic purpose. In the late night, he received information that Darya Khan and others are committing sodomy with Munawar Ali and Zaffar Ali and are beating them. On receiving such information, he alongwith his brother Sultan and relative Sikandar left for Thadho Machine Stops and reached at 0200 hours and saw that Munawar Ali was having injuries on his head and other parts of body. On inquiry, they disclosed that Darya Khan and others on the pretext of picnic brought them in a hut and at about 11:00 PM accused each Din Muhammad, Yousif, Jan Muhammad all

sons of Allah Dino Rajar, Noor Muhammad S/o Hussain Rajar and two unknown accused persons came there armed with pistols. All the eight accused persons made them naked and committed forcible sodomy with them and they on show of force also got committed sodomy with each other and recorded movie on mobile phone and inflicted blows to Munawar Ali and issued threats that if they disclosed the fact to anyone they will be murdered. Subsequently, such FIR bearing Crime No. 133 of 2021 was registered at police station Khipro under Section 377, 355, 337(A)(i).

3. I have heard learned counsel for the applicants, complainant and learned APG and have also perused the material available on record.

4. Learned counsel for the applicants / accused has argued that the applicants have not committed the offence charged with; they are innocent and have falsely been implicated in this case; FIR is delayed for more than 04 days without any plausible explanation; that it does not attract to the prudent mind that three brothers (accused Jan Muhammad, Yousif and Din Muhammad) committed sodomy in presence of each other and in fact the complainant has tried to rope the entire family; that the names of accused Nangar and Moula Bux did not transpire in the FIR but during investigation P.Ws in their statements under Section 161 Cr.P.C. disclosed their names though the P.Ws were family members of complainant party but they did not given their names in FIR; that how the accused persons caused injury to Munawar Ali and did not cause any scratch to Zaffar Ali, and further the FIR is silent that who caused injuries to Munawar Ali hence the case requires further inquiry; that in actual the Complainant obtained of Rs.7,00,000/- from accused Muhammad Raheem and in order to avoid its repayment, has lodged the above FIR; that in rape cases per Section 9 of the Anti-Rape (Investigation and Trial) Ordinance, 2020, a JIT headed by DPO is to be constituted to conduct investigation but in the instant matter a police officer has been appointed to investigate the matter in violation of above law; that in view of the above a case of further inquiry is made out, therefore, the law provides that benefit of doubt must go in favour of accused persons. He lastly prayed for confirmation of bail to the applicants / accused.

5. Learned A.P.G. duly assisted by Mr. Muhammad Imran Chaudhry learned counsel for complainant has argued that there is no malafide intention of complainant to implicate the applicants / accused in false case and accused have not denied the offence allegedly committed which even not taken ground in their bail application. He further submitted that the applicants/accused on show of weapons committed unnatural offence with two victims and recorded their movie and issued threats of murder and dire consequences and got the said video viral on social media, therefore, their obligation in respect of the offence is sufficient ground for rejection of bail.

6. The complainant has alleged sodomy against all the accused persons. Prima facie no DNA/medical evidence is available on record to connect the applicants with the present crime. So far as other allegations leveled by the complainant are concerned, the same requires evidence and at bail stage only tentative assessment is to be made. Investigation has been completed and challan has been submitted according to Investigating Officer present in Court and the applicants /accused are regularly attending the trial court, therefore, keeping them behind the bar will serve no purpose.

7. For the aforesaid reasons, the applicants/accused have successfully made out their case of further inquiry. Accordingly, instant bail application is allowed and the pre-arrest bail granted to the applicants by order dated 11.10.2021 is hereby confirmed on the same terms and conditions. Needless to say that trial Court would be competent to exercise the powers for cancellation of bail of accused, if they misuse the concession of bail, without making any reference to this Court.

8. The observations made herein above are tentative and shall not prejudice the case of either party at trial.

JUDGE