

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. B. A. No. S- 895 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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10.12.2021

Mr. Afzal Karim, Advocate holding brief for Mir Asif Talpur,
advocate for applicant

Mr. Muhammad Yousif Leghari, Advocate for complainant

Mr. Nazar Muhammad Memon, Addl. P.G.

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant Criminal Bail Application, applicant Saleem Khan Qaimkhani seeks pre-arrest bail in Crime No.78 of 2021 registered at police station Satellite Town, Mirpurkhas under Section 354-A,341,337-A(i) F-(i),504, 506(ii) and 34 PPC.

2. The accusation against the applicant is that on 29.8.2021 at about 2020 hours, he along with his accomplice blocked the car of Complainant in front of the Clinic of Dr. Balchand at Mirpurkhas, where she went for medical checkup of her mother; and, her request to applicant to remove his car in front of her car, in result the applicant, become furious, misbehaved and badly thrashed her out in front of public at large. The report of the incident was lodged immediately to the concerned police. Applicant to avoid his imminent arrest approached this court and succeeded in obtaining pre-arrest bail from this Court vide order dated 08.10.2021.

3. Applicant present in person has submitted that the story as portrayed by the complainant in the FIR is false and fabricated; that all the sections applied in the FIR areailable except section 354-A Cr.P.C. which is applied by the investigating officer during investigation however the same is not attracted in the present case; that in the FIR the Complainant has stated that one Corolla Car No. AMW-934 allegedly belonging to the applicant, blocked her car but

the investigating officer even did not bother to verify from Excise Department, whether the said car is registered in the name of present applicant or otherwise; that no independent person has been cited as witness in spite of the fact that the clinic of Dr. Balchand is well known and is situated in thickly populated area; that the complainant with malafide intention has registered the FIR against the applicant for the reasons best known to her; that there is contradiction between the investigation report and the contents of FIR as the complainant stated that she has been caused injury in the right hand but the investigating officer prepared mashirnama of injuries showing seven injuries on the person of complainant, hence the case of applicant requires further inquiry. He lastly prayed for confirmation of bail to the applicant.

4. Mr. Muhammad Yousif Leghari, learned counsel for complainant vehemently opposed the grant of bail to the applicant on the premise that there is no malafide on the part of complainant to falsely book the applicant in such a heinous offense, as there appears to be no previous enmity between the parties; thus the story narrated by her is true and trustworthy could be believed at bail stage. He asserted that in such a situation, the victim girl normally avoids being exposed herself and take risk of such blame, therefore, at this juncture, the applicant is not entitled to pre-arrest bail; that the applicant has saved himself from the clutches of law by obtaining pre-arrest bail thus the investigation is badly affected which needs to be given sanctity independently by referring the custody of the applicant to police for carrying out investigation properly under the law. He prayed for dismissal of the bail application.

5. Mr. Nazar Muhammad Memon learned Addl. P.G has supported the stance of complainant and argued that in such cases, it is presumed that the victim would have not dishonored herself or her family without any reason. He lastly submitted that the applicant has committed a heinous offense which is hit by the prohibitory clause of section 497, Cr.P.C. He prayed for dismissal of the bail application.

6. I have heard the applicant who is present in person, learned Counsel for complainant and learned Additional P.G., and perused the record.

7. Tentative assessment of the record reflects the following position: -

a. The incident took place on 29.8.2021 at 2020 hours and the same was reported on the same day at 2100 hours.

b. As per mashirnama of injuries recorded on the same day, the complainant received seven injuries on her different parts of the body.

c. Medico-legal officer opined vide report dated 31.8.2021 that complainant received seven injuries of abrasion on her different parts of the body.

d. Medico-legal officer also described clothes of the complainant i.e. Kameez, Shalwar of pink color and chadar and as per report Kameez (shirt) was torn from different sides.

e. Mashirnama of recovery of clothes, prima facie shows that the kameez (shirt) was torn from the front and backside as well as from both sleeves.

f. Photograph of the vehicle bearing Registration No.AMW-934 with the monogram of Sindh Bar Council, which prima-facie, corroborates the story narrated by the complainant.

g. Criminal history of the applicant, prima facie shows that earlier seven cases were also registered against him, including the murder case at PS Steel Town, Mirpurkhas.

h) In this regard, the applicant submits that he has been acquitted in the aforesaid crimes. Be that as it may.

i. Further statement of applicant recorded on 07.9.2021, prima facie shows; that the applicant is not an advocate; that he admitted that the said car belongs to him; that he has badly beaten the complainant and torn her clothes, which exposed her body at public place.

j. PWs Mst. Shamim and Zubair son of Iqbal supported the version of complainant.

k. N.C. report dated 29.8.2021 shows that the complainant was referred for medical examination to the WMO Civil Hospital Mirpurkhas on the same day.

8. prima-facie there are serious allegations against the applicant as he has allegedly outraged the modesty of an innocent woman and caused several injuries on various parts of her body, at the public spot, which action, prima-facie is intolerable, if proved at trial. Besides that there is no malafide on the part of complainant/victim lady to falsely book the applicant in such a heinous offense, as there appears to be no previous enmity between the parties; thus the story narrated by her can be taken into consideration for just decision of

bail application only; and let the proceedings be commenced by the trial court to ascertain pro and contra, after recording evidence of the parties; therefore, at this point, the applicant is not entitled to the concession of pre-arrest bail on the premise that for the time being, the applicant has saved himself from the clutches of law by obtaining pre-arrest bail. As per the police file, the victim's modesty has been outraged at public place, inhumanly allegedly by the applicant; and, she even courageously appeared before police officer and made a detailed statement about her grievance, fully implicating the applicant and confirming the contents of FIR. According to the statement of complainant/ victim girl, she was badly thrashed out in public place by the applicant; and, her clothes were almost torn by the applicant, such mashirnama of injuries and recovery of clothes coupled with her statement supported by other independent witnesses is sufficient to suggest that the applicant is prima facie involved in the alleged offense when the same is considered coupled with the fact that any animosity between the parties, is absent for false implication.

9. The question whether section 354-A is attracted in the present case or otherwise; and, it is for the trial court to look into the matter after recording evidence. The statement of victim under section 154 Cr.P.C. is almost in line with her allegations leveled against the applicant. Prima facie, medico-legal certificate supports the case of complainant so far as injuries and tearing off her clothes are concerned. Mashirnama of recovery of clothes is also in line with the FIR and opinion of the medico-legal officer.

10. The Honorable Supreme Court in the recent judgment in pre-arrest bail matters has held that judicial protection is based on equity and cannot be extended in every run-of-the-mill criminal case founded upon incriminatory evidence, warranting custody for investigative purposes. Primarily, the remedy of extra-ordinary concession of pre-arrest bail is meant to save innocent from false implication, rigors of trial, and humiliation. On this proposition, I seek guidance from the decision of Honorable Supreme Court rendered in the case of Gulshan Ali Solangi and others v. The State through P.G. Sindh (2020 SCMR 249).

11. Keeping in view all the facts and circumstances and while seeking guidance from the judgment of Honorable Supreme Court in the cases of Chaudhry Shujat Hussain v. The State (1995 SCMR

1249), Muhammad Umar vs. the State and another (PLD 2004 Supreme Court 477), Alam Zeb and another v. State and others (PLD 2014 S.C. 760) and Muhammad Sarfraz Ansari. Vs. State and others. (PLD 2021 SC 738), I am of the tentative view that the case of applicant does not fall within the ambit of “further inquiry” falling within the ambit of Section 497(2) Cr.P.C, rather there are reasonable grounds for believing that the applicant has participated in the commission of alleged offenses.

12. As a consequence of the facts and circumstances surfaced on the record, I am not persuaded to grant extraordinary relief to the applicants under Section 498 Cr. P.C, which could only be granted to the person who has been falsely booked in the crime, which he did not commit, however, in the present case there are serious allegations against the applicant coupled with his criminal history; and, his involvement in the alleged crime, prima-facie, could not be ruled out.

13. This bail application is accordingly dismissed. Resultantly, the Interim order passed earlier vide order dated 08.10.2021 is recalled.

14. The observations recorded hereinabove are tentative and shall not prejudice the case of the parties during trial. The learned trial Court is directed to conclude the trial within two (02) months and if the same could not be concluded at least the complainant must be examined.

JUDGE