

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Bail Application No. 239 of 2022

Applicant : Muhammad Bux s/o. Noor Ahmed, through
Mr. Riaz Hussain, advocate

Respondent : The State, through
Mr. Faheem Hussain Panhwar, D.P.G.

Complainant : Mst. Zermeena w/o Ghulam Abbas (*present in
person*)

Date of hearing : 24.02.2022

Date of order : 24.02.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant criminal bail application, applicant/accused Muhammad Bux s/o. Noor Ahmed seeks post-arrest bail in Crime No. 377/2021, registered at P.S. Mahmoudabad, Karachi under section 376/511/337-J, P.P.C. His earlier application for the same relief bearing No. 01/2022 in Sessions Case No. 3245/2021 was dismissed by the learned IIIrd Additional Sessions Judge, Karachi-South vide order, dated 13.01.2022.

2. The allegations against the applicant, who is the brother-in-law of the complainant Mst. Zermeena, are that, on 10.09.2021 at about 12:30, he administered intoxicating tea to complainant and then committed rape on her.

3. The learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in this case by the complainant with mala fide intention and ulterior motives due to personal grudge; that there is no mark of violence on the body of the complainant; that the complainant and applicant reside in the same house alongwith other family members but no one heard any voice; that as per report of Sindh Forensic D.N.A. and Serology Laboratory, the D.N.A. profile obtained from epithelial fraction of stain section taken from *shalwar* of complainant was the moisture of atleast three individuals; that as per medico legal report of J.P.M.C. "no direct evidence of any fresh

violent sexual inter-course has been found; as such, the allegation of rape is not supported by the medical evidence; that as per medical report of Industrial Analytical Centre “no traces of any sedative, narcotics, psychoactive, toxic or poisonous substance found in provided samples”; hence, the case against the applicant is one of further inquiry.

4. On the other hand, learned D.P.G. vehemently opposes this application on the ground that the complainant/victim and her sister Mst. Rubina, the wife of the applicant, have fully implicated the applicant for commission of the alleged offence; that the corroborative medical evidence also strengthens the prosecution case; that no reasonable ground exists to disbelieve the allegations leveled against the applicant, who is brother-in-law of the complainant and reside in the same house.

5. I have considered the arguments advanced by the learned counsel for the parties and also perused the material available on record.

6. It appears that on alleged day, at 0030 hours, applicant went into the room of complainant with cup of tea which was taken by her and then she fell asleep. Later, at 0430 hours, she awake and felt that someone was holding her and committing rape on her, on her shouting, applicant ran away. The shalwar of the complainant was stained; her sister Mst. Rubina (*the wife of the applicant*) and other family members got up. She narrated the incident to her said sister; thereafter, she went to Jinnah Hospital alongwith her said sister for medical checkup. During course of investigation, police secured two empty tea cusps and one Viagra tablet which were sealed at the spot. After arrest, the applicant was produced for medical examination and later the blood sample of complainant, her cloth and blood sample of applicant were deposited with Sindh Forensic DNA Serology Laboratory, University of Karachi for DNA. Although as per MLC no direct evidence of any fresh violent sexual intercourse was found on the person of the complainant, yet as per Forensic DNA & Serology Analysis report

“the DNA profile obtained from epithelial fraction of stain section taken from shalwar of complainant (*item #4.1*) was a mixture of at least three individuals. Complainant and the applicant cannot be excluded as possible contributors to this mixed DNA sample obtained from epithelial fraction of item #4.1.

7. The applicant is nominated in the FIR by name with specific role of committing rape on the complainant. The ocular account is fully supported with forensic DNA & serology report/evidence. There appears no mala fide on the part of complainant and her sister Mst. Rubina, who is wife of the applicant, to implicate the applicant with commission of alleged offence. As regards applicant's claim of false implication on account of personal grudge, it is an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law. From the tentative assessment of the evidence in hands of prosecution, I am of the view that prima-facie sufficient evidence is available against the applicant to connect him with the commission of alleged offence, carrying punishment for death or imprisonment not less than ten years or more than twenty-five years. Every hypothetical question which could be imagined would not make it a case of further enquiry simply for the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

10. As a result of above discussion, the instant criminal bail application is dismissed. Needless to mention here that the observations made hereinabove by this Court are tentative in nature and the same shall not influence the trial Court while deciding the case of applicant on merit.

JUDGE