ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI Crl. Misc. Application No. 136 of 2022.

Date Order with signature of Judge

- 1. For orders on M.A. No. 2495/2022 (U/A)
- 2. For orders on M.A. No. 2496/2022 (Ex./A)
- 3. For hearing of main case.
- 4. For orders on M.A No. 2497/2022 (Stay/A)

25th February 2022

Mr. Muhammad Nazir Tanoli, advocate for the applicants.

- 1) Urgency granted.
- 2-4) Heard and perused record.

It would be conducive to refer relevant paragraphs of the impugned order, which are that:-

"All the accused persons are specifically nominated in the FIR and version of the complaint is also supported by PWs in their statements recorded under Section 161 Cr.P.C. Record further shows that the complainant namely Mst. Sanam was subject to physical assault and resultantly her wearing cloths were torn. Moreover, accused persons also made an attempt to commit her rape but the incident attracted her neighbors which made the accused persons to escape away.

The conclusion of the above material is that the investigation Officer (I.O) has brought the sufficed material linking the accused person with the commission of offence but section 354-A and section 376/511 shall also be applicable in the case hence the same stands added. Let the cognizance be taken against all the accused persons under section 190 (b) Cr.PC and case be registered against them under section 452, 337-A(i), 354-A, 376/511, 34 PPC. As per record the accused persons are on bail for offence under section 354/452//34 PPC therefore let the show cause be issued to them as to why they should not be taken into custody for the offence under section 354-A and 376/511 PPC."

Learned counsel for the applicants, *inter alia*, contends that the stance taken by complainant in application under Section 22-A Cr.P.C. and FIR is different; applicant has admitted that accused are relatives and there is no evidence that victim received any injury, hence, learned

Magistrate failed to apply his judicial mind and cognizance taken by him is against the law.

Admittedly, FIR was registered; matter was investigated; report was submitted under Section 173 Cr.P.C., thereafter learned trial Judge while examining the report accorded the same and the case was sent up for trial. Grounds raised by learned counsel cannot be considered at this stage. With regard to addition of any section by the Magistrate would be immaterial as trial court would be under legal obligation to frame charge as per contents of statements and FIR to establish the case. Accordingly, present Crl. Misc. Application is dismissed alongwith listed applications. Applicants would be at liberty to file application under Section 249-A/265-K Cr.P.C before the trial Court in accordance with law.

JUDGE