

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 1344 of 2021

Date	Order with signature of Judge
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Applicant : Aziz-ur-Rehman @ Babul, through
Mr. Abdul Rauf, advocate.
Complainant : Mst. Shumaila, through
Ms. Amna Usman, advocate.
The State : Ms. Rahat Ehsan, DPG a/w
SIP Muhammad Ejaz of P.S. Docks.
Date of hearing : 22.12.2021.

ORDER

NADEEM AKHTAR, J. – Through this bail application under Section 498 Cr.P.C., the applicant Aziz-ur-Rehman alias Babul has sought admission to bail pending trial in Crime No.514/2021 registered against him on 15.06.2021 at P.S. Docks Kemari Karachi under Sections 452, 376 and 506-B PPC. Vide order dated 14.07.2021, ad-interim bail before arrest was granted to the applicant subject to his furnishing solvent surety in the sum of Rs.50,000.00 and a P.R. bond for the same amount to the satisfaction of the Nazir of this Court.

2. According to the subject FIR lodged by the complainant Mst. Shumaila, she was present in her house with her children on 14.06.2021 when her husband had gone out for work ; at about 08:45 pm her neighbour Babul (applicant / accused) entered into her house, held her by her arm, took her to a room, locked the room from inside, and took out a pistol and stripped her from her clothes ; after threatening her that he will kill her if she makes any noise, he committed *zina* with her ; and thereafter, he opened the door and ran away. Upon registration of the subject FIR by the complainant, interim pre-arrest bail was granted to the present applicant by the learned Xth Additional Sessions Judge Karachi West vide order dated 29.06.2021 passed in Bail Before Arrest Application No.3138/2021. However, vide order dated 08.07.2021 the aforesaid bail application filed by the applicant was dismissed by the learned Additional Sessions Judge.

3. It is contended by learned counsel for the applicant that the allegations against the applicant are false, fabricated and malafide ; he has been implicated falsely due to enmity because another FIR bearing No.521/2021 registered against him by the complainant's husband under Section 496-A PPC was cancelled in 'B' Class ; there is a contradiction in the FIR and the statement of

the complainant recorded under Section 164 Cr.P.C. ; there are no witnesses to corroborate the alleged offence ; the DNA test report does not support the case of the prosecution ; the applicant does not have any previous criminal record ; and, there is no possibility that the applicant will tamper with the evidence or influence the witnesses of the prosecution or abscond if he is enlarged on bail. In support of his submissions, he relied upon *Ehsanullah V/S The State (2012 SCMR 1137)*, *Muhammad Ayoub V/S The State and another (2021 P.Cr.L.J. 821)*, *Gaman Bangulani and 2 others V/S The State (2021 YLR Note 30)*, *Muhammad Shareef V/S The State and another (2020 YLR Note 46)*, *Chelo and another V/S the State (2020 YLR 1406)*, *Fida Ahmed V/S The State (2020 YLR Note 153)*, *Rana Muhammad Javed Iqbal V/S The State and another (2018 YLR 207)*, *Ashiq Ali and 6 others V/S The State and another (2018 P.Cr.L.J. 1084)*, *Muhammad Zafar V/S Civil Judge and Judicial Magistrate-8, Hyderabad and 2 others (2016 P.Cr.L.J. 207)*, and *Pervaiz and another V/S The State and another [2014 P.Cr.L.J. 599 (Lahore)]*.

4. On the other hand, learned counsel for the complainant submits that the complainant has specifically nominated the applicant with the specific role of committing *zina* with her. She further submits that there is no contradiction in the FIR and the complainant's statement under Section 164 Cr.P.C. with regard to the role of the applicant in relation to the offence committed by him. She points out that only some additional details were stated by the complainant in her statement under Section 164 Cr.P.C. that were not inconsistent with the contents of the FIR. The allegations of malice on the part of the complainant and enmity between the parties are strongly denied by her by submitting that the cancellation of the other FIR against the applicant in 'B' Class has no relevance with the subject offence nor does it affect the merits of the present case. Regarding the DNA test report, she contends that the samples for the said test were admittedly collected after twelve (12) days of the incident, therefore, the test report issued on the basis of such samples is of no consequence. She submits that it is well-settled that conviction can be awarded in cases of rape even in the absence of medical evidence, therefore, the concession of bail can be declined in such cases. She further submits that the complainant was pregnant when she was raped by the applicant. Learned counsel has vehemently opposed the grant of bail to the applicant in view of her above submissions and also on the ground that the offence of rape committed by him falls within the prohibitory clause of Section 497 Cr.P.C.

5. In support of her above submissions, learned counsel for the complainant placed reliance upon *Muhammad Arshad V/S Muhammad Rafique*

and another (PLD 2009 S.C. 427), Rashad V/S The State (2002 SCMR 1329), Nehal V/S The State and another (2020 SCMR 2053), Atif Zareef V/S The State (unreported judgment dated 04.01.2021 of the Hon'ble Supreme Court in **Criminal Appeal No.251/2020 & Criminal Petition No.667/2020**), Zahid V/S The State (unreported judgment dated 21.10.2021 of the Hon'ble Supreme Court in **Criminal Petition No.75-Q of 2021**), Adil V/S The State [2016 YLR 1259 (Sindh)], Imran V/S The State [2016 P.Cr.L.J. 1888 (Sindh)], Salman V/S The State [2014 P.Cr.L.J. 641 (Sindh)], Usman Khan V/S Mst. Nasreen and 2 others (2021 MLD 1833), Muhammad Tariq Ilyas V/S The State (2018 YLR Note 224), Muhammad Nasir Iqbal V/S State [PLJ 2000 Cr.C. (Lahore) 713], Rana Raja Falak Javed V/S The State and another (2021 YLR 388), Dilawar V/S The State and another [2020 MLD 155 (Lahore)], Mukhtiar Ali and others V/S The State (2018 YLR 1743), and Qadeer and another V/S The State (2017 YLR Note 283).

6. Learned Addl. P.G. has adopted the submissions made on behalf of the complainant. Additionally, he submits that the role of the applicant is clear and specific in the subject FIR in relation to the offences of rape, criminal intimidation and house trespass committed by him. He points that malafide on the part of the police has not been alleged by the applicant.

7. I have heard learned counsel for the applicant and complainant and the learned Addl. P.G. and have carefully examined the material available on record. Perusal of the FIR shows that the complainant has specifically and clearly nominated the applicant with the specific role of committing *zina* with her. In her statement recorded under Section 164 Cr.P.C., she has reiterated the allegations made by her in the FIR by fully implicating the applicant for committing the offence of *zina* with her. There is no ambiguity in the allegations made to this effect by her in the FIR, and there appears to be no contradiction in her statement under Section 164 Cr.P.C. The offence was allegedly committed on 14.06.2021 at 8:45 pm and was reported by the complainant on 15.06.2021 at 3:10 pm. The reporting of the alleged crime by her with reasonable promptitude rules out any chance of false involvement of the applicant or manipulation of the narrative of the FIR. It is well-settled that in cases of rape, mere statement of the victim is sufficient to connect the accused with the commission of the offence, if the statement of the victim inspires confidence. *Prima facie*, the statement of the complainant does in fact inspire confidence as no married woman with children and family would dare to make any such allegation that would not only dishonor, disgrace, humiliate or embarrass her and the entire family, but could remain a stigma for them for the

rest of their lives. Moreover, the complainant will not gain anything by levelling false allegation against the applicant. There is nothing on record to show that the offence alleged against the applicant is the result of malafide on the part of the complainant or the police.

8. In Atif Zareef (supra), the Hon'ble Supreme Court was pleased to hold that rape is a crime that is usually committed in private and there is hardly any witness to provide direct evidence of having seen the commission of crime by the accused person ; the Courts, therefore, do not insist upon producing direct evidence to corroborate the testimony of the victim if the same is found to be confidence inspiring in the overall peculiar circumstances of a case, and considers such a testimony of the victim sufficient for conviction of the accused person ; and a rape victim stands on a higher pedestal than an injured witness, for an injured witness gets the injury on the physical form while the rape victim suffers psychologically and emotionally. The submission made on behalf of the applicant that there are no witnesses to corroborate the alleged offence, therefore, has no force. The other submission made on his behalf that the DNA test report does not support the case of the prosecution also does not have any force as the samples for the said test were admittedly collected after twelve (12) days of the alleged occurrence. In such circumstances, the absence of fresh evidence of intercourse was quite natural. Needless to say the effect of the DNA test report in the facts and circumstances of the instant case shall be considered by the trial Court.

9. Since the complainant has made a direct allegation of *zina* against the applicant / accused, her statement is sufficient to connect him with the commission of the offence alleged against him. It is well-settled that the accused in such heinous offence is not entitled to the concession of bail. This view is fortified by 2002 SCMR 1329, unreported judgment dated 04.01.2021 of the Hon'ble Supreme Court in Criminal Appeal No.251/2020 and unreported judgment dated 21.10.2021 of the Hon'ble Supreme Court in Criminal Petition No.75-Q of 2021. It is well-settled that for the purpose of bail, only tentative assessment could be made and detailed assessment and evaluation of evidence should be left for the trial court. From the tentative assessment on the basis of the FIR specifically nominating the applicant and attributing direct role to him, I am of the view that the same is, *prima facie*, sufficient to connect the applicant / accused with the offence alleged against him in the FIR which falls within the prohibitory clause of Section 497(1) Cr.P.C. The applicant / accused is, therefore, not entitled to the grant of concession of pre-arrest bail.

10. It is hereby clarified that the assessment made and the findings contained herein are tentative in nature which shall not prejudice the case of any of the parties, and the trial court shall decide the case strictly on merits.

11. Consequently, the pre-arrest bail granted to the applicant on 14.07.2021 is hereby recalled and this bail application is dismissed with direction to the trial Court to conclude the trial expeditiously within two (02) months strictly in accordance with law. Let this order be communicated to the trial Court for compliance.

J U D G E