

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Bail Application No. 619 of 2021

Applicant: Shakeel son of Muhammad Yousuf.
Through Syed Samiullah Shah, Advocate.

The State: Through Syed Meeral Shah,
Additional Prosecutor General Sindh.

Date of hearing: 29.04.2021

Date of order: 29.04.2021

Arshad Hussain Khan, J.- The applicant / accused namely; Shakeel son of Muhammad Yousuf through above bail application has sought post-arrest bail in the case bearing F.I.R. No.12/2021, registered under Sections 376/511/342 PPC at P.S. Quaidabad.

2. Briefly stated the facts of the FIR are that the complainant lodged the FIR stating therein that on 04.01.2021 his daughter namely; Ayesha aged about 05 years went to buy something from a nearby shop, however, when she did not return back up to half an hour, he left the house and made inquiry from the shop keeper about his daughter, who replied that much earlier she had come to his shop, however, after purchasing she went away. Thereafter, he started to search her daughter and during search he found his daughter weeping near the quarter of one Shakeel. On inquiry, his daughter disclosed that one *Mota* uncle took her inside his house and after closing the door he forcibly removed her trouser and attempted to commit Zina with her, however, when she started crying he slapped her and sent her out from his house. Subsequently, after locking the door of his house he ran away; hence the subject FIR.

3. Learned counsel for the applicant/accused has argued that there is no ground to believe that applicant/accused has committed any offence with which he stands charged otherwise the story narrated in the FIR is concocted and fabricated one thus the case requires further inquiry. He has further argued that no such incident has ever been occurred and, in fact, complainant lodged FIR on the basis of misunderstanding. It is also argued that the complainant has sworn an

affidavit of No Objection to grant of bail to the applicant/accused, therefore, he may be admitted to bail.

4. Learned Additional Prosecutor General for the State vehemently opposed the bail application on the ground that the name of the applicant/accused is mentioned in the FIR with a specific role and as such he is not entitled for concession of bail.

5. Whereas, in pursuance of Court Notice, the complainant present in Court, while referring to his affidavit, available on the record, submits that he has No Objection to grant of bail to the applicant/accused as the FIR has been lodged on the basis of some misunderstanding/doubt and on the instigation of UC Chairman, Majeed Colony, Sector-II. Karachi.

6. I have considered the arguments advanced by learned counsel for the applicant/accused and the Additional Prosecutor General as well as perused the material available on the record.

7. Record reveals that the offence with which the accused/applicant has been charged is a non-compoundable. However, in view of the statement of the complainant, as well as his affidavit of no objection, the case of the applicant/accused calls for further inquiry under sub-section (2) of Section 497 Cr.P.C. For the sake of ready reference Para Nos. 2 and 3 of complainant's affidavit are reproduced as under:-

“2. I say that due to misunderstanding the instant FIR was registered by me on the instigation of UC Chairman of Majeed Colony, Sector II, and I do not want to proceed instant case against the present accused person furthermore and I have no objection if this Honourable Court grant him bail.

3. That I say that I have lodged instant FIR on the basis of misunderstanding/doubt against the applicant/accused, therefore, I withdraw from such FIR as the accused is innocent.”

8. The record also shows that the applicant/accused is not previous convict nor a hardened criminal. Moreover, he is behind the bar since his arrest and is no more required for any investigation nor the prosecution has claimed any exceptional circumstance, which could justify keeping him behind the bars for an indefinite period pending

determination of his guilt. Consequently, while taking into consideration the statement of the complainant before the Court and his affidavit, the applicant was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.50,000/- and P.R. Bond in the like amount to the satisfaction of the trial court by my short order dated 29.4.2021.

9. Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail then the trial Court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 29.04.2021.

Judge

*Tahir***