

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

Crl. Bail Appln. No. S- 319 of 2021.

Applicant: Majid Ali son of Sono Khan Abro, through Mr. Habibullah G. Ghouri, Advocate.

The State: Through, Mr. Muhammad Noonari, DPG.

Complainant: Aamir Ali Khokhar, through Mr. Mohsan Bhatti, Advocate.

Date of hearing: 30.07.2021.
Date of order: 02.08.2021.

ORDER

Adnan-ul-Karim Memon, J: -Apparently, impugned herein is the order dated 02.07.2021 whereby post-arrest bail was refused to the applicant by the learned IV-Additional Sessions Judge, Larkana, in F.I.R No.42 of 2021, registered with Police Station Darri, District Larkana, for offenses punishable under sections 452, 376 and 511 *P.P.C.* The applicant is now seeking admission on post-arrest bail in the aforesaid crime.

2. The accusation against the applicant as outlined in the said Crime is that on 22.06.2021 at midnight, the applicant attempted to commit rape with the wife of the complainant, however, the report of the incident was lodged on the second day i.e 23.06.2021 with Darri Police Station. The applicant is stated to have been arrested on 24.06.2021. Prima-facie, he being aggrieved by and dissatisfied with his unjustified arrest and humiliation, torture at the hands of complainant party preferred post-arrest bail before the learned IVth Additional Session Judge Larkana by filing Criminal Bail Application No.932/2021, which was, later on, dismissed vide order dated 02.7.2021 on the premise that the applicant attempted to commit Zina, which falls within prohibition contained in Section 497(1) Cr.P.C. The applicant has now approached this Court for his admission on post-arrest bail.

3. Mr. Habibullah G. Ghori, learned counsel for the applicant, has argued with a vehemence that the prosecution story is unbelievable based on malafide intention and ulterior motives, just to humiliate the applicant with the allegations of purported rape with the wife of the complainant. He emphasized

that nothing has happened, neither alleged rape has taken place, nor such attempt has ever been made as alleged by the complainant in the aforesaid F.I.R. Per learned counsel, the applicant is innocent and has falsely been implicated in the said case. Per learned counsel, the ingredients of the alleged offense of rape are missing which factum requires further inquiry into the guilt of the applicant. He pointed out that there is a considerable delay of hours in lodging of the FIR which casts serious doubts about the genuineness of the version of the complainant, hence the false implication of the applicant in the said crime could not be ruled out. He prayed for allowing the instant bail application.

4. Mr. Muhammad Noonari, learned Deputy Prosecutor General, assisted by Mr. Mohsan Bhatti, learned counsel representing the complainant, has strongly controverted the plea put forward by the applicant as discussed supra and relied upon the statement dated 30.07.2021 and argued that the father of the applicant Sono Khan filed an application under section 22-A(6)(i) and 22-B Cr.P.C before the learned IIIrd Additional Session Judge Larkana about the occupation of a portion of the plot of Masjid and purportedly the applicant used to restraint the complainant party to do that act, such Criminal Misc. application No.1112/2021 was dismissed vide order dated 26.7.2021 with direction to file a direct complaint. Learned counsel for the complainant in support of his contentions relied upon the Call Data Record (CDR) and argued that there was a telephonic conversation between the applicant and victim Mst. Nazia wife of the Complainant that connects the present applicant in the aforesaid crime. He prayed for the dismissal of the instant bail application.

5. I have considered submissions of the parties and perused the material available on record, as well as impugned order passed by the learned trial Court in the aforesaid matter.

6. Tentative assessment of the record reflects the following position of the case:-

- i. *FIR No.42/2021 was lodged on 23.06.2021 at about 0200 (Noon), whereas the alleged offense took place on 22.06.2021 at about 04.00 a.m.*
- ii. *Prima facie, the role of the applicant has been attributed for the commission of alleged rape to attract section 376 P.P.C, whereas the*

said section provides that whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine. However, it is for the trial court to see whether the ingredients of section 376 PPC attracts or otherwise which could only be thrashed out at the time of recording of evidence of the complainant and alleged victim.

- iii. *The applicant has been shown arrested on 24.06.2021 which shows injuries on his parts of the body, whereas the father of the applicant filed application under Section 22-A and 22-B Cr.P.C with the allegations that proposed accused including complainant committed a cognizable offense punishable under section 395 read with sections 397, 324, 337A(i) F(i), 337 (v), 295, 147, and 149, however, the said application was rejected with direction to file a direct complaint, which factum needs to be thrashed out by the learned trial Court after the recording of the evidence.*
- iv. *Prima facie, the alleged victim in her 161 Cr.PC statement has only stated about the attempt of the applicant to commit rape, which statement needs to be looked into by the learned trial Court, whether the offense under Section 376 PPC attracted or otherwise.*
- v. *Prima facie, PWs did not state about the injuries received by the applicant at the time of alleged fighting between them, however, the Police at the time of arrest of the applicant found several severe injuries on the body of the applicant.*
- vi. *The medical report dated 24.06.2021 of injuries received by the applicant, prima facie shows that he was admitted to the Hospital on 22.06.2021 and was discharged on 24.06.2021, which factum requires thorough probe by the learned trial Court.*
- vii. *The report of CDR is yet to be scrutinized by the learned trial Court.*
- viii. *Prima-facie there is a dispute between the parties on a certain piece of the plot as stated in the application under Section 22-A and 22-B Cr. P.C.*

7. To assess and evaluate the grounds agitated on behalf of the parties. It is a well-settled principle of law that at the bail stage a deeper appreciation of evidence cannot be gone into but a bird eye view is to be taken on available record before the Court to satisfy, prima facie, whether the accused is/ are connected with the commission of offense even otherwise the benefit of the doubt will go to accused even at bail stage, if he makes out a case for the aforesaid concession.

8. It is noted that the applicant has been mainly booked in this case under section 376 PPC. To constitute an offense under section 376 PPC, that whoever

commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine. However, it is for the trial court to see whether the ingredients of section 376 PPC attracts or otherwise as narrated by the complainant in F.I.R, which factum could only be thrashed out at the time of recording of evidence of the complainant and alleged victim. Besides above, the Medical report dated 24.06.2021 of injuries received by the applicant, prima facie shows that he was admitted to the Hospital on 22.06.2021 and was discharged on 24.06.2021; and, to see as to how the applicant received severe injuries on his body as per the medical report and who caused the same, this aspect of the case requires thorough probe by the learned trial Court after the recording of the evidence. Even PWs have not narrated about the injuries received by the applicant at the time of alleged fighting between them as reported by the complainant in the FIR, however, the Police at the time of arrest of the applicant found several injuries on the body of the applicant. The aforesaid factual position of the case has not been controverted by the learned counsel for the complainant rather the complainant, who is present in court has affirmed the same; be that as it may, this plea also requires examination by the trial Court. Prima facie, the version of the events as portrayed by the parties, as well as the accusation leveled against the applicant and the plea taken by the applicant require further inquiry as depicted in section 497(2) Cr.P.C.

9. For the above reasons, the applicant Majid Ali has made out a case for post-arrest bail in FIR No.42 of 2021, registered with Police Station Darri, District Larkana, for offenses punishable under sections 452, 376, and 511 P.P.C. Accordingly, the applicant is admitted to post arrest bail; he shall be released in the aforesaid crime subject to furnishing his bail bond in the sum of Rs.50, 000/- (*Fifty Thousand Ruprees*) and P.R bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to mention here that any observation is made in this order is tentative and shall not affect the merits of the case.

Judge