

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD.**

**Cr. Bail Application No.S — 334 of 2021.**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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**13.09.2021.**

FOR HEARING OF MAIN CASE.

Mr. Waqar Ahmed Memon Advocate for applicants.  
Applicants/accused are present on interim pre-arrest bail.  
Mr. Shahid Ahmed Shaikh, Additional P.G. for the State.

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**NAIMATULLAH PHULPOTO, J.-**

Applicants/accused Muhammad

Aslam s/o Bashir Ahmed, Muhammad Arshad s/o Muhammad Hussain, Abdul Rasheed s/o Rehmat Ali seek pre-arrest bail in crime No.60 of 2021, registered at Police Station Tando Adam City on 3.4.2021, at 1600 hours against applicants/accused for offence under sections 376, 511, 147, 148, 149, 457, 337-A(i), 337-F(i) PPC.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by Mst. Yasmeen are that she is widow and is mother of two daughters who are residing with her in the house situated at Bangla Road Tando Adam. It is alleged that present incident took place at 9-00 p.m. at that time complainant was present in her house along with minor daughters. Door was knocked. Complainant went at the door and saw applicant/accused Muhammad Aslam alias Ahmed Raza s/o Bashir Ahmed Rajput, Rasheed alias Sheeda Talli s/o Rehmat Ali and Arshad Chohan s/o Muhammad Hussain and two un-identified accused, who entered into the house of complainant. It is stated that applicant Muhammad Aslam alias Ahmed Raza grappled with complainant from front side of her shirt and asked co-accused to lay her down for committing zina with her. It is stated that Mst. Yasmeen raised cries which attracted P.Ws. Anwar Chohan, Ashraf Chohan and others. It is alleged that applicants/accused persons while causing injuries to the complainant at her face and other parts of the body and went away. Complainant went to the Police Station for lodging her FIR. Thereafter, the police referred the complainant/injured to Taluka Hospital

Tando Adam for her treatment. Complainant in the end of FIR has stated that accused had attempted to commit rape and caused her injuries. FIR of the incident was lodged on 3.4.2021 at 1600 hours vide crime No.60 of 2021, for offence under sections 376, 511, 147, 148, 149, 457, 337-A(i), 337-F(i) PPC. After registration of the FIR, Investigation Officer recorded statements of the daughter of the complainant namely Maryam aged about 12 years and Iqra 11 years so also other witnesses namely Ashraf Chohan and Anwar Chohan. Mst. Yasmeen was medically examined. Investigation Officer on the basis of 161 Cr.P.C. statements of some persons, placed the name of accused Muhammad Aslam alias Ahmed Raza in Column No.2 and submitted report against the remaining accused for offences under sections 457, 337-A(i), 337-F(i) 34 PPC but concerned Civil Judge & Judicial Magistrate vide order dated 23.4.2021 disagreed with the report of I.O and joined Muhammad Aslam as accused and sections 376/511 PPC were also added.

3. Previously, applicants/accused applied for pre-arrest bail before learned Additional Sessions Judge, Tando Adam. The same was rejected by him vide order dated 24.04.2021. Thereafter, applicants/accused have approached this Court for the same relief.

4. Mr. Waqar Ahmed Memon learned Advocate for applicants/accused mainly contended that applicant Muhammad Aslam was present in Mosque at the time of incident. It is further argued that there is dispute between the parties over the house. Mr. Memon argued that complainant has lodged false FIR against the accused; ingredients of alleged offences are not made out from the facts and circumstances of the case. In support of his submissions, he has relied upon the cases reported SHAH NAWAZ alias CHULLU v. THE STATE (2013 P.Cr.L.J. 1782) and MUHAMMAD TANVIR v. THE STATE and others (2017 SCMR 366).

5. Learned Additional P.G. argued that element of the malafide which is precondition for grant of pre-arrest bail is missing in this case. It is further submitted that plea of alibi raised by applicant/accused Muhammad Aslam during investigation can only be considered by the trial Court after recording the

evidence. Learned Additional P.G. further argued that complainant in her FIR and her minor daughters in their 161 Cr.P.C. statements and two independent witnesses namely Ashraf Chohan and Anwar Chohan have implicated the applicants/accused in the commission of the offence. According to learned Additional P.G. complainant is a widow and she had received 04 injuries as per medical certificate issued by Dr. Mehwish Anjum. He has opposed the prayer for pre-arrest bail to the applicants/accused, while relying upon the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129).

6. I have carefully perused the contents of the FIR, 161 Cr.P.C. statements of the daughters of the complainant who are the minors and 161 Cr.P.C. statements of two independent prosecution witnesses Ashraf and Anwar who came running to the house of complainant at the time of incident so also medical certificate issued by lady doctor which shows that complainant had received 04 injuries as described in the medical certificate.

7. Apparently, assault or criminal force to a widow by applicants/accused in presence of her two minor daughters in her house at night time with intent to outrage her modesty is heinous offence. At this stage, contention of learned Advocate for applicants/accused that name of applicant/accused Muhammad Aslam was placed in column No.2 of the challan is concerned, it may be observed that opinion of the Investigation Officer is not binding upon the Court, which has to formulate its opinion independently after examining the record of the case. Complainant/victim widow had received 04 injuries corroborated by the medical evidence. At bail stage, only tentative assessment of material is to be made; deeper appreciation of evidence is not permissible under the law.

8. Prima facie, there appear reasonable grounds for believing that applicants/accused have committed the alleged offences. Grant of pre-arrest bail is extraordinary remedy in criminal jurisdiction. It is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore applicants seeking judicial protection are required to reasonably demonstrate

that intended arrest is calculated to humiliate them with taints of mala fide. It may be observed that it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation as held in the case of RANA ABDUL KHALIQ v. The STATE and others (2019 SCMR 1129).

9. Applicants / accused, who seek pre-arrest bail, have failed to show mala fide or ulterior motive on part of the complainant or police. Therefore, conditions for grant of pre-arrest bail are not satisfied in this case. As such, applicants are not entitled for concession of extraordinary relief of pre-arrest bail. Hence, application for pre-arrest bail is rejected. The interim pre-arrest bail already granted to the applicants/accused vide order dated 29.04.2021 is hereby recalled.

10. Needless to mention that the observation made hereinabove are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

JUDGE

A.

7. As regards to the contention of learned Advocate for the applicants/accused that applicant Muhammad Aslam s/o Bashir Ahmed was present in the Mosque at the time of incident and Investigation Officer has recorded statements of the independent persons during investigation. It may be observed that statements of the independent persons can only be examined deeply by the trial Court. At the bail stage this Court is bound to tentatively assess the material available on record. Complainant is widow lady and was residing with her two minor daughters. There was no male member in her house. Allegations against applicants/accused are serious in nature. As regards to the contention that there was dispute over the house between the parties but such contention has not been substantiated by the defence Counsel.

Applicants / accused have not been able to make out a case for grant of extraordinary relief of pre-arrest bail. Moreover, applicants / accused have attempted to commit zina upon the complainant and during such incident the complainant had received 04 injuries. The version of complainant is supported by her two minor daughters in their 161 Cr.P.C. statements. Apparently, ocular evidence is corroborated by the medical evidence. Deeper appreciation of evidence / material is not permissible at bail stage, at this stage only tentative assessment of material is to be made. Prima facie, there appear reasonable grounds for believing that applicants/accused have committed the alleged offence.