

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

Cr. Bail Application No.S-561 of 2021

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
-------------	---

---

1. For orders on office objections.
2. For hearing of main case.

**06.09.2021**

Mr. Ashique Hussain D. Solangi, Advocate for applicant  
alongwith applicant.

Mr. Shahid Ahmed Shaikh, Additional P.G for the State.

Complainant present in person.

=

**NAIMATULLAH PHULPOTO, J.-** Applicant / accused Abu Bakar @  
Mohsin Ali Shoro seeks pre-arrest bail in Crime No.71 of 2021 registered at  
P.S Sehwan for offences under Sections 376(2), 365, 342, 506/2, 34 PPC.  
Previously, applicant / accused applied for pre-arrest bail before learned  
Additional Sessions Judge, Sehwan, the same was declined by him vide order  
dated 07.07.2021.

2. Brief facts of the prosecution case are that complainant Jameel  
Ahmed lodged F.I.R on 08.05.2021 at 1200 hours at P.S Sehwan, it was  
recorded against the applicant/accused and another vide Crime No.71 of 2021  
for offences under Sections 376(2), 365, 342, 506/2, 34 PPC, alleging therein  
that Ms. Fazila @ Aisha, aged about 18 years, is his sister and she was  
studying in IXth Class but she discontinued her studies about six months back  
because applicant and co-accused committed rape with her. It is further stated  
that she was under depression. Complainant has further stated that on  
07.05.2021 at noon time, he alongwith his father and brother Shakeel Ahmed  
were present at their shop. At about 02:30 p.m., Ms. Fazila @ Aisha was  
going to his maternal uncle namely Qalandar Bux; when she reached near the

street where it is alleged that two persons appeared on the motorcycle, they were identified by the complainant as Hussain S/o Dost Ali and applicant Mohsin S/o Muhammad Ali, by caste shoro. It is stated that Mohsin Ali was driving the motorcycle. Ms. Fazila @ Aisha was forcibly made to sit on the motorcycle and he drove away the motorcycle. Complainant party followed the accused persons but without any success. Complainant party continued search. It is stated that at 10:30 p.m., complainant party reached near Sindh Bank and found that Ms. Fazila @ Aisha was weeping in the street. On inquiry, she informed to her brother that about six months back applicant / accused, who was residing in the Mohallah of the complainant, took her away alongwith his friend when she was returning back from the school and committed rape with her but she did not inform to the parents due to fear. Ms. Fazila @ Aisha told to brother that both accused have again committed rape with her. The Sehwan Police lodged F.I.R of the incident and referred Ms. Fazial @ Aisha for her medical examination and report. Positive report was received from the lady doctor. Investigation Officer recorded 161 Cr.P.C statement of Ms. Fazila @ Aisha.

3. Applicant / accused applied for pre-arrest bail before learned Additional Sessions Judge, Sehwan, the same was rejected by him vide order dated 07.07.2021.

4. Learned Advocate for the applicant / accused mainly contended that first incident / episode was not reported to the Police which created doubt in the prosecution case. It is also submitted that medical certificate has been managed by the complainant party and DNA report did not support the prosecution case. Lastly, it is submitted that applicant / accused has a good case for grant of pre-arrest bail.

5. Learned Additional Prosecutor General argued that a young girl discontinued her studies, because of sexual harassment caused to her by the applicant and co-accused. It is further submitted that Ms. Fazila @ Aisha has implicated the applicant in her 161 Cr.P.C statement and her evidence is corroborated by the medical evidence. It is submitted that alleged offence is punishable for death or imprisonment for life. Lastly, learned A.P.G argued that the ingredients for grant of pre-arrest bail are not satisfied in this case.

6. I have carefully heard learned Counsel for the parties and perused the relevant record.

7. Ms. Fazila @ Aisha, aged about 18 years, in her 161 Cr.P.C statement has mentioned that about six months prior to the registration of F.I.R she was studying in IXth class. When she was returning to home, applicant and co-accused kidnapped her and committed rape but due to fear she did not disclose the incident to her parents but discontinued her studies as she was mentally disturbed. It is the case of the prosecution that same offence was repeated by the applicant and co-accused on 07.05.2021 when Ms. Fazila @ Aisha was forcibly taken on motorcycle from street and detained in a room where again she was subjected to rape by the applicant and co-accused. After registration of the F.I.R, Ms. Fazila @ Aisha was medically examined by the lady doctor. It is certified by the doctor that Ms. Fazila @ Aisha has been subjected to sexual intercourse. Ms. Fazial @ Aisha is present before the Court today and strongly opposed the prayer of the applicant for pre-arrest bail. Prima facie, there appear reasonable grounds for believing that applicant / accused has committed the offence under Section 376(2) PPC, which is punishable with death or imprisonment for life. No mala fide on the part of the complainant / victim Ms. Fazial @ Aisha or Police have been alleged by the applicant. It may be observed that at bail stage tentative assessment of

material is to be made and deeper appreciation of evidence is not permissible under the law. Moreover, 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 applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him 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). Relevant portion is reproduced as under:-

*“2. Grant of pre-arrest bail is an extra ordinary 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 a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; 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. Ever since the advent of Hidayat Ullah Khan's case (PLD 1949 Lahore 21), the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case. The case referred to by the learned Judge-in-Chamber unambiguously re-affirms above judicial doctrine and thus reliance being most inapt is unfortunate to say the least.”*

8. For the above stated reasons, no case for grant of pre-arrest bail to the applicant /accused is made out. Consequently, application for pre-arrest bail is dismissed and interim pre-arrest bail already granted to the applicant vide order dated 09.07.2021 is hereby recalled.

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

JUDGE

Shahid