

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

Cr. Bail Appl. No.S-441 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection
For hearing of main case

22.04.2022.

Mr. Mumtaz Ahmed Lashari advocate for applicant.
Ms. Rameshan Oad, A.P.G. for the State.

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ZULFIQAR AHMED KHAN, J: Through this bail application, the applicant/accused Faizan Ali seeks post arrest bail in Crime No.11 of 2021, registered at PS Women & Children, Hyderabad, for offences under sections 376 and 506, PPC. Earlier on approach his bail application was declined by learned Jnd. Additional Sessions Judge, Hyderabad vide order dated 15.03.2022.

2. Concisely the facts of the FIR are that complainant Mst. Moomal lodged FIR at the relevant police station alleging therein that applicant/accused Faizan son of Ali Hyder used to take the daughter of the complainant namely Komal aged about 7/8 years with him on the pretext that he will provide her sweets and had also committed rape with her daughter about ¾ years back and then the said matter was resolved on the intervention of their relatives and the accused / applicant was excused. Again on 09-03-2021 at 1500 hours the accused / applicant committed rap with the daughter of complainant within the sight of complainant and also issued her threats of dire consequences. Hence complainant went to PS and lodged the FIR against the applicant / accused.

3. Learned counsel for the applicant contends that applicant being innocent has been falsely involved in this case due to matrimonial / family dispute between them as earlier applicant was engaged to enter into marriage with complainant's daughter, which has been refused; that there is 8 days delay in lodgment of FIR which has gone unexplained; that no independent witness is cited to corroborate the version of complainant; there are material contradictions in the statements of complainant and prosecution witness examined before the trial court; that DNA report is delayed for 5 months and the result of the same is also in negative and the samples does not match with the male DNA profile of the applicant, so also the medical report is in negative; that statements of complainant Mst

Moomal and PW Ghulam Fareed have been recorded by the trial court which are placed on record. In view of above, learned counsel for the applicant prayed for grant of bail to the applicant on the ground of further inquiry.

4. Conversely learned A.P.G opposed the grant of bail by stating that the name of applicant is mentioned in the FIR with specific roll and all PWs have fully supported the version of complainant narrated in the FIR. She next submits that on similar grounds, the bail application of the present applicant has already been dismissed by this court vide order dated 22.11.2021 and no fresh ground has been urged in this bail application, therefore, present bail application may be dismissed.

5. Heard learned counsel for respective parties and perused the material available on record with their assistance.

6. It is an admitted position that the name of applicant transpires in the FIR with specific roll and all PWs have fully supported the complainant's version narrated in the FIR. Per FIR, applicant / accused Faizan used to give sweets to baby Komal aged about 7/8 years and committed rape with her but elders of Muhalla gathered on his apologies he was forgiven. There after again on 29-3-2021 at 1600 hours applicant committed rape with baby Komal and then complainant lodged this FIR. Further, challan has already been submitted before the competent Court of law and DNA report has also been collected by the prosecution. It is worthwhile to mention here that this type of offence is against the society and in now a day's such kind of offences are increasing day-by-day and frequently grant of bail in such type of offences amounts to give license to the culprits to repeat such offence and in this matter accused despite of having forgiveness again repeated such offence, therefore, at this stage sufficient material is available on record to connect the present applicant with the commission of alleged offence. With regard to the evidence of complainant Mst Moomal and PW Ghulam Fareed recorded by the trial court is concerned, it is suffice to say that the evidence of two prosecution witnesses cannot be considered at bail stage, as it amounts to deeper appreciation. In this regard, it is settled by the Hon'ble Apex Court that deeper appreciation of the evidence is not permissible while deciding the bail application and the same is to be decided tentatively on the basis of material available on record.

7. From the tentative assessment of the record, I am of the humble view that on similar grounds, the bail was declined to the present applicant on merits earlier by this court vide order dated 22-11-2021 and

the applicant has failed to make out any fresh ground in this bail application. Resultantly the instant bail application is dismissed.

8. The above bail application is disposed of in the above terms.

JUDGE

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