

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

Cr. Bail Application No.S- 1226 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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16.12.2022.

Miss Nadia Memon, Advocate for applicant.
Mr. Abdul Waheed Bijarani, A.P.G for State.
Mr. Ashfaqe Ali Mallah, Advocate for complainant
alongwith complainant.

ORDER

Muhammad Saleem Jessar, J.- Applicant Soomar son of Loong Chang seeks his admission on post arrest bail in Crime No.79/2022 PS Tando Ghulam Hyder u/s 376, 509 PPC. The case has been challaned which is now pending for trial before the Court of 1st Additional Sessions Judge, Tando Muhammad Khan vide Sessions Case No.187/2022 Re-The State v. Soomar Chang.

2. The facts of the case are already mentioned in FIR as well as in memo of bail application; hence, need not to be reiterated in order to save precious time of the Court.

3. Learned counsel for applicant submits that the applicant is aged about 62 years and husband of victim lady Mst. Shahzadi namely Meenh Wasayo is his brother-in-law (salo) who divorced the victim; therefore, she had not only arrayed the accused but also her husband and other inmates of the house. She further submits that the clothes allegedly worn by the victim were not sent to Laboratory for DNA test and per DNA report same were not found stained with any semen drop; hence, case against applicant requires further inquiry. In support of her contention, she places reliance on the case of MUHAMMAD ASIF v. The STATE (PLJ 2022 Cr.C. 491). She further submitted that victim has been examined before the trial Court as witness No.1 at Ex.3 on 03.10.2022 and she had deposed that at the time of alleged incident Mst. Ameena, Allahdino and Porhi had also witnessed this offence;

however, instead of making them witness has shown them as accused; besides, she also had made to her husband Meenh Wasayo to be accused. She further submitted that after registration of the case, FIR was disposed of by police in false 'B' class. Such report in terms of Section 173 Cr.P.C was submitted before the Magistrate at Tando Muhammad Khan, who after hearing the parties as well victim did not concur his opinion with police report to the extent of applicant; however, accepted the report to the extent of co-accused. She further submitted that applicant was found innocent during investigation by the I.O which is sufficient to hold the case of applicant to be of further inquiry. In support of her contentions, she has also placed on record a copy of order dated 26.07.2022 passed by the Magistrate, taken on record. She further submitted that there is property dispute between the parties as the plot where the complainant / victim as well accused are residing is in the name of one Nabi Bux son of Balo Chang and such *Sanad* was issued by the Collector / Assistant Commissioner, Badin under Sindh Goth Abad Scheme; therefore, victim intends to take its lion's share and claims that entire property belongs to her grandfather; hence, the applicant and co-accused should be ousted. She further submitted that due to this core issue, instant case against the applicant has been registered. She; therefore, submitted that the applicant may be admitted to bail.

4. On the other hand learned A.P.G appearing for State opposed the bail application on the ground that applicant is nominated in FIR with specific role; that the medical evidence supports the case of prosecution; therefore, accused is not entitled for concession of bail. He; however, could not controvert the fact that DNA report has been issued in negative and the clothes worn by the lady victim have not been found to be stained with semen or blood etc.

5. Mr. Ashfaque A. Mallah, learned counsel for complainant / victim also opposes the bail application on the ground that the accused is aged about 62 years, but per medical evidence he is capable to perform sexual intercourse; therefore, plea taken by learned counsel for applicant that he being aged about 62 years is not capable to perform sex, is not much of consequences. He further submitted that mere DNA

report is no ground for claiming bail. In support of his contentions, he placed reliance upon the case ABDUL GHANI v. The STATE through P.G. Balochistan and another (2022 SCMR 544).

6. Heard learned counsel for the parties and perused the material made available on record.

7. Undoubtedly, the FIR is delayed for about a month for which no plausible explanation has been furnished by prosecution. Moreover, the accused and victim are inmates of one family and reside within the common enclosure. Per evidence of victim as recorded by her before the trial Court at the time of alleged incident, she alongwith other inmates were sleeping in Veranda where accused dared to commit crime in presence of his family unit is highly doubtful and impossible for a man to commit such an immoral activity in presence of other inmates when particularly he being an elder and a person of advanced age. The evidence of alleged lady / victim further reveals that as and when her husband Meenh Wasayo came and was informed about the incident who instead to give solace to her, gave divorced papers and later she got registered instant case against the accused as well her husband and other inmates of family. All this suggests that case of the prosecution is not free from doubt and the trial Court has to decide every corner of the case minutely.

8. It is settled principle of law that every accused would be presumed to be blue eyed boy of the law until and unless he may be found guilty of charge and law cannot be stretched upon in favour of the prosecution particularly at bail stage. It is also settled principle of criminal administration of justice that bail cannot be withheld as premature punishment if otherwise accused has succeeded to make out a good prima facie case of further enquiry.

9. In view of above admitted position of record, I am of the opinion that applicant has made out a good prima facie case for his release on bail within the meaning of sub-section (2) to Section 497 Cr.P.C. Resultantly, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the

sum of Rs.100,000/- (Rupees one lac) and P.R Bond in the like amount to the satisfaction of the learned trial Court.

Above are the reasons of my short order dated 16.12.2022.

JUDGE

Tufail