

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

Criminal Bail Application No.S-186 of 2022.

DATE ORDER WITH SIGNATURE OF JUDGE

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

02.09.2022.

Mr. Khalid Saeed Soomro advocate for the applicant.
Mr. Meer Ahmed Mangrio advocate a/w complainant.
Ms. Sana Memon, Assistant Prosecutor General, Sindh.
Applicant is present on ad-interim pre-arrest bail.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Applicant, who is husband of maternal aunty of complainant, is alleged to have committed rape with complainant on show of a pistol in her house on 25.12.2021 when her husband was not available. The matter was reported to police on 01.02.2022 through an order passed by learned Additional Sessions Judge/ Justice of Peace Dadu u/s 22-A/B Cr.P.C.

Learned defence counsel while pleading for bail has stated that in investigation the case has been disposed of under "C" Class. The report submitted by police in application under Section 22-A, B CrPC filed by the complainant discloses that she on account of a dispute over pension of her grandfather to which wife of applicant is entitled has falsely implicated him. The owner of house where this incident took place has verified that the complainant and her husband lived in the house from 08.10.2021 till 12.12.2021 and on the day of incident the house was vacant. Her husband too has stated that on the day of incident i.e. 25.12.2021 his mother had died in Bhan city and he and his wife had gone there and has not supported the incident. Clothes worn by lady on the day of incident alongwith blood sample of applicant were also sent for DNA and report is negative.

His arguments have been controverted by learned counsel for complainant on the ground that delay in this matter is immaterial and lady has specifically implicated the applicant.

Learned APG has however stated that any order on merits of the case may be passed, as the report under Section 173 Cr.P.C. shows that prima facie no convincing evidence was found against the applicant.

I have considered submissions, taken into consideration grounds raised in defence plus the statements of owner of house, husband of lady recorded during inquiry conducted in terms of application under Section 22-A/B CrPC plus opinion of I.O. incorporated in the report u/s 173 CrPC. They all have not supported the incident. The I.O. did not consider the evidence sufficient to refer the applicant to the Court for a trial. Which not only make the case against applicant as one of further inquiry but at the same time also suggests that malafide on the part of complainant cannot be excluded. The unexplained delay in FIR in such circumstances assumes significance and can be considered as a relevant circumstance in favor of applicant. Accordingly, this bail application is allowed and ad-interim pre-arrest bail granted to the applicant vide order 24.02.2022 is hereby confirmed on the same terms and conditions.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE

Irfan Ali