

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1691 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>22-9-2022</u>	
	<p>Mr. Saifullah, Advocate for the applicant. Mr. Zafar Ahmed Khan, Addl.P.G.</p> <p style="text-align: center;">=====</p> <p>Omar Sial, J.: Asad s/o Asghar Ali has sought post arrest bail in crime number 18 of 2021 registered under section 376 P.P.C. at the Sukhan police station on 16.01.2021. Earlier, his application seeking bail was dismissed on 30.04.2022 by the learned 5th Additional Sessions Judge, Malir.</p> <p>2. The aforementioned F.I.R. was registered on the complaint of one Mashooq Ali. Mashooq recorded that on 16.01.2021 his two daughters, Sanam, aged 10, and her younger sister Saeeda had left the house to buy something. A little while later, a sobbing Saeeda came back home and told her father that one of their neighbors named Asad had forcibly dragged Sanam into a room. The father went to the place identified by Saeeda and saw Sanam and Asad coming out of a room. Asad ran away and Sanam told her father that Asad had raped her. Subsequently, Asad was arrested.</p> <p>3. The learned counsel for the applicant has submitted that the applicant is innocent and in this regard he stressed solely on the testimony of the complainant recorded at trial in which he had declined to identify the applicant as the culprit. He was therefore declared hostile by the prosecution. To the contrary, the learned Addl.P.G. supported the impugned judgment. None appeared on behalf of the complainant inspite notice. I have heard the counsels and reviewed the record. My observations and findings are as follows.</p> <p>4. Why the father of the survivor turned hostile and declined to identify the accused is something best known to him. Prima facie I find the father's somersault motivated either by bad faith or duress. No doubt the truth will emerge when the trial is completed and the learned trial judge has had an opportunity to examine holistically the entire evidence. At the moment however,</p>

in view of the statement recorded by the survivor in her section 161 Cr.P.C. statement as well as at trial, in which she has categorically implicated the applicant as the culprit as well as identified him at trial, I am not inclined to give any concession to the applicant for the complainant becoming hostile. The fact that the DNA confirmed the applicant's semen found on the survivor also establishes a strong nexus of the applicant with the offence complained of. Prima facie, the little girl has no ill-will or enmity with the applicant to falsely implicate him nor has any been argued by the learned counsel. The survivor is admittedly a 10 year old girl and thus a minor. In terms of section 376(3), the applicant faces a potential capital sentence and hence the case falls within the prohibitory clause of section 497 Cr.P.C.

5. In view of the above, the application is dismissed.

JUDGE