

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Bail Application No. 1347 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of bail application.

19-9-2022

Ms. Tabassum Hashmat, Advocate for the applicant.
Ms. Amna Usman, Advocate for complainant.
Ms. Robina Qadir, DPG.

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Omar Sial, J.: On 16.01.2022 at 4:00 p.m. one Nasir Ashraf went to the Baloch Colony police station and provided information of an offence that had occurred in the night between 15.01.2022 and 16.01.2022. Nasir recorded that when he returned from work on 15.01.2022 his wife informed him that their 15 year old son Shayan had gone to buy himself a burger but has not returned. The father kept searching for his son but was unable to find him. At about 3:00 a.m. he found his son crying in front of a bakery. Shayan told his father that he had been forcibly put in a vehicle with tinted glasses and had been sodomized by the 2 men riding the vehicle. He had managed to get of the vehicle when it had stopped at a signal. A rickshaw with passengers already on it was stopped by Shayan, who then dropped him close to his home after hearing his ordeal. F.I.R. No. 23 of 2022 was registered under sections 365, 377 and 34 P.P.C. against 2 unknown persons.

2. CCTV footage was sought from the place of incident. Geo-fencing was done. After it's investigation the police were able to arrest one of the two accused by the name of Mohammad Arif alias Tanga. Arif during investigation revealed that the person who was his accomplice was named Shahbaz alias Shabba (the applicant) and that the vehicle used in the offence was Shahbaz's. Raids were conducted but neither Shahbaz nor the vehicle were traced. Subsequently Shahbaz himself surrendered before the learned 3rd Additional Sessions Judge and was granted interim pre-arrest bail. His pre-arrest bail was not confirmed on 29-4-2022 hence he was taken in custody.

3. Learned counsel for the applicant has argued that a charge pursuant to section 377 P.P.C. was dropped against the applicant and that he is now accused

only of an offence under section 365 P.P.C. She argued that an offence under section 365 P.P.C. was not made out as the vehicle used in the crime was not recovered and that the only evidence against the applicant is the statement of the co-accused Arif. To the contrary the learned counsel for the complainant as well as the learned DPG both supported the impugned order. I have heard the counsels and reviewed the record. My observations and findings are as follows.

4. I respectfully disagree with the learned counsel that the only piece of evidence against the applicant is the statement of the co-accused Arif. The survivor of the incident i.e. the little boy Shayan has recorded a section 164 Cr.P.C. statement in which he had recognized both the accused as being the ones who had sodomized him. It is an admitted position that an identification parade was not held however at this preliminary stage I see no reason why a 15 year old boy would falsely implicate the accused. Upon a tentative assessment, had there been ill-will, the F.I.R. would not have been filed against unknown persons. The applicant has earlier been accused in a narcotics case (F.I.R. No. 111 of 2020 at the Saddar police station) as well in a case of a similar nature as the present case (F.I.R. No. 326 of 2021 at the Baloch Colony police station). Prima facie the DNA report shows that the DNA profile obtained from the sperm fraction of the anal swab of the survivor was a mixture of at least two individuals. The medical report reflects that the anal tone of the survivor was increased. Prima facie this is caused due to anxiety, stress as well as anal fissures. I notice that in the supplementary DNA report it is said that the DNA samples taken do not match the applicant. These aspects will have to be decided at trial once the learned trial court has had an opportunity to review the evidence produced. Be that as it may, the applicant may still have a case of abetment as well as a case of kidnapping to answer. At this preliminary stage and upon a tentative assessment I am not inclined to grant the applicant the concession of bail.

5. In the peculiar circumstances of the case, it would be appropriate in this case that the learned trial court is directed to use its best endeavours to conclude the trial within a period of 4 months.

6. Bail application is dismissed.

JUDGE