

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Bail Application No. 1257 of 2018

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of bail application

30.10.2018

Mr. Muhammad Rafiq Brohi, Advocate for applicant.
Mr. Zahoor Shah, DPG for State.
Complainant present in person.

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The applicant Wali Mohammad has sought post arrest bail in crime number 62 of 2018 registered under section 376(i) P.P.C. at the Manghopir police station. Earlier, his post arrest bail application was dismissed by the learned 6th Additional District and Sessions Judge Karachi West vide his order dated 16-8-2018.

2. Mudassar Hussain registered the aforementioned F.I.R on 24-2-2018 stating therein that on 16-2-2018, his twelve year old daughter Aqsa went to the applicant's house to do school work with his children. She returned crying in the afternoon but would not disclose to the parents the reason for crying. On 21-2-2018, the complainant took Aqsa to a faith healer who after speaking to Aqsa told her father that something bad had happened to her and that he should now speak to her. Aqsa then disclosed to her father that she had been raped by the applicant.

3. I have heard the learned counsel for the applicant as well as the learned D.P.G. and the father of the victim as well as the victim. My observations are as follows.

4. Learned counsel has argued that there is a delay in the lodging of the F.I.R. as well as in the medical examination of the victim; that the victim at the time of her examination has stated that an unknown person had raped her; that the DNA test is negative and that the applicant has children of his own.

5. The victim has been consistent in her statements (both what she told her father and what she recorded in her section 164 Cr.P.C statement) regarding the guilt of the applicant. The statements made by the victim will be put to the test of cross examination but prima facie and at this early stage, there appears to be no reason for her to falsely implicate the applicant, who happens to be her neighbor, nor has any reason been attributed for a false allegation by the learned counsel for the applicant. Medical evidence seems to support the allegation made by the victim however, once

again, a conclusive determination in this regard can only be made by the learned trial court after evidence is led. As regards the delay in the medical examination and registering the F.I.R., one can reasonably expect a delay due to the stigma involved in reporting such offences. In any case, the cause and impact of delay will be determined at trial. As regards the argument regarding the DNA report, I note that the same is negative because no male DNA sample was obtained from the HVS sample and clothes of the victim to match with the DNA sample of the applicant. Prima facie it appears that the victim has been violated and that there is no reason for her to falsely implicate the applicant.

6. Above are the reasons for the short order dated 26-10-2018 in terms of which the bail application of the applicant was dismissed.

JUDGE