

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

Criminal Bail Application No.S-216 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE

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

10.04.2023.

Mr. Muhammad Hussain Laghari advocate for the applicant.
Mr. Rai Singh Sodho advocate for the complainant.
Mr. Abdul Waheed Bijarani Assistant Prosecutor General.
Applicant is present on ad-interim pre-arrest bail.

O R D E R

MUHAMMAD IQBAL KALHORO, J:- Applicant, facilitated by co-accused Punhoon, was spotted by complainant committing rape with his daughter Sakina aged about 15/16 years in his house on 29.01.2023 at 05 PM, where the complainant was attracted to on cries of his daughter, when he was available in his house situated nearby the house of the applicant. Initially, he tried to get redressal of his grievance by complaining against the applicant to his Nekmards but finding no hope, he finally recorded FIR on 07.02.2023 against the applicant as stated above. Medical examination of the victim was conducted on 08.02.2023, her hymen was found ruptured. For DNA report, samples were taken on 20.02.2023, which atleast shows that there are two individual contributors to the samples found on the clothes of the victim.

Learned counsel for the applicant has pleaded for confirmation of bail on the ground that there is delay in FIR; applicant is employed in NICVD and was present at his posting place at Mithi on the day of incident; DNA report is in negative and the applicant has been falsely implicated in this case. He has relied upon 2023 SCMR 397, 2022 SCMR 663 and 2021 SCMR 130.

On the other hand, complainant's counsel and learned APG have opposed bail to the applicant and have relied upon 1985 SCMR 974, 2021 MLD 1833, 2018 MLD 176 and 2022 PCrLJ 828.

I have considered submissions of the parties, taken guidance from the case law and perused material available on record. The

applicant is directly nominated by the complainant in a heinous offence of commission of rape by him with his daughter, whose 164 CrPC statement was recorded during investigation in which she has fully implicated him for such an act. The allegations in FIR and statement of the victim are prima facie supported by the medical evidence which shows that the victim although 15/16 years of age is not virgin. Arguments in defence that DNA report is negative is not helpful to the applicant at this stage; as the circumstances behind collecting the samples and manner of collecting the same, and therefore relevance of DNA report, is yet to be determined by the Court in the trial. It is settled that in the cases of rape, statement of victim coupled with medical evidence is sufficient to establish at least prima facie for the purpose of bail the allegations against the accused.

The plea of alibi although is taken by the applicant but the report under Section 173 CrPC shows that before the I.O. he had not adverted to such plea as there is no word of the Investigating Officer over this point which, notwithstanding, is subject to confirmation to be had by the trial Court in the trial. Its effect, if any, cannot be weighed at the stage of pre-arrest bail, which can be granted to a person who is implicated in the case on the basis of malafide or ulterior motives on the part of complainant or police. The complainant and victim both have implicated the applicant and, delay, per se, in FIR, which even otherwise appears to be reasonably explained by the complainant is no ground to extend the relief of extra ordinary nature to the applicant. This being the position, I do not find the applicant entitled to the concession of pre-arrest bail. Accordingly, the bail application is dismissed and ad-interim pre-arrest bail granted to him vide order dated 07.03.2023 is hereby recalled.

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

JUDGE