

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Bail Application No.S-254 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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07.04.2023

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

Mr. Ghulamullah Chang, advocate for the applicant along with applicant, who is present on interim pre-arrest bail.

Mrs. Samreen Khaskheli, advocate files Vakalatnama on behalf of complainant, taken on record. Complainant is also present in person.

Mr. Imran Ahmed Abbasi, A.P.G. Sindh.

**Amjad Ali Sahito, J:-** Through instant bail application, the applicant/accused namely, Sulleman alias Salu seeks pre-arrest bail in Crime No.110/2022, registered at Police Station Tando Ghulam Hyder for the offence under sections 376, 511, 337-A (i), 337-F (i) PPC. Earlier the bail plea of the applicant/accused was declined by the learned Additional Sessions Judge-I, Tando Muhammad Khan vide order dated 06.10.2022.

2. The details and particulars of the FIR are already available in the bail application and FIR, the same could be gathered from the copy of the FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant has mainly argued that the applicant/accused is innocent and has falsely been implicated in this case due to previous enmity; that the FIR registered by the complainant after two days delay without plausible explanation; that no overt-act has been attributed to the applicant/accused; that the place of incident is thickly populated area despite such fact no any independent person has witnessed the alleged incident nor cited as witness of the incident; that there is no any independent ocular as well as corroborative evidence against the applicant/accused regarding commission of offence; that challan has been submitted and applicant/accused is regularly attending the trial Court; that the applicant/accused is no more required for further investigation. Learned counsel has prayed for grant of bail to the applicant/accused.

4. On the other hand, learned A.P.G. Sindh as well as learned counsel for the complainant have vehemently opposed the grant of bail to the applicant/accused.

5. Heard and perused the record.

6. Perusal of record reflects that at the time of incident, the complainant Mst. Rabia was pregnant of six months, she went to jungle for natural call adjacent to her house; meanwhile, the applicant/accused attacked upon her and attempted to commit forcible zina with her, to which, she raised cries and on her cries, one Sher Muhammad reached there and rescued her. Said PW Sher Muhammad in his 161 Cr.P.C. has also supported the version of complainant. Delay in lodgment of FIR has been fully explained. Since, the prosecution has, *prima facie*, furnished sufficient material to connect the applicant/accused with the commission of offence, therefore, this is a case where bail cannot be granted to the applicant/accused when the specific role has been assigned to the applicant/accused and there is no *mala fide* or ill will on the part of complainant has been brought on the record to believe that the accused has been booked in this case falsely. In this context, the reliance is placed to the case of '**Mukhtar Ahmad v. The STATE and others**' [2016 SCMR 2064]. Further, in addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation. In such type of offence where innocent ladies are subjected or attempted to commit forcible zina, then it casts a heavy duty upon the courts to safeguard the rights and honor of such victims within the limits of law by discouraging such type of acts. There is sufficient documentary material available on the record to establish that the case of the applicant/accused does not fall within the purview of section 497(2), Cr.P.C. entitling for further inquiry into his guilt. Consequently, instant criminal bail application is **dismissed** and interim pre-arrest bail granted to the applicant/accused vide order dated 24.03.2023 is hereby recalled.

7. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicants on merits.

JUDGE