

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.S- 642 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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16.10.2023.

Mr. Shabeer Hussain Memon, Advocate for applicant
alongwith applicant (on bail).

Ms. Sana Memon, A.P.G for State.

Mr. Badal Gahoti, Advocate for complainant.

ORDER

Mohammad Karim Khan Agha, J.- The applicant Lakhmir Halepoto was booked in Crime No.20/2023 registered at Police Station Bhan Saeedabad in respect of the offences u/s 377, 342, 337-J PPC. He approached the learned trial Court for pre-arrest bail which was declined by order dated 15.06.2023. The applicant has now approached this Court for pre-arrest bail.

2. The brief facts of the case are that on 03.04.2023 Nadir Ali aged about 12 years left his house at about 1900 hours to meet his grandfather however he did not arrive and the complainant became worried and asked from his neighbors whereabouts of his son. The neighbors informed the complainant that his son was seen by them at Ice Cream Agency of Lakhmir Halepoto. The complainant alongwith his sons Sajjad and Mujahid went to the aforesaid Ice Cream Agency however, the gate was locked. The complainant's son Sajjad climbed the wall and opened the door and when the complainant and his sons entered into the Ice Cream Agency, they saw on the light of bulbs that his son Nadir Ali who had gone missing was lying naked upside down in

unconscious condition and the shalwar (trouser) of accused Lakhmir was put off and he was forcibly committing sodomy with his son Nadir Ali. After being seen by the complainant and his sons the accused made his escape good. The complainant then showered water upon his son and he regained his senses. They got worn the clothes to Nadir Ali and then took him to a private hospital for treatment. According to complainant his son was given ice cream by accused and by mixing something in it he became unconscious.

3. Learned counsel for the applicant has contended that there was a delay of 15 days in lodging the FIR; that the medical evidence did not support the prosecution case as DNA test was negative and the victim was only about 12 years age and as such his evidence cannot be relied upon.

4. On the other hand learned A.P.G and learned counsel for the complainant stated that delay in lodging the FIR had been explained; that there were three eye witnesses in the incident and that there was no enmity between the parties and as such the applicant's pre-arrest bail should be recalled. In support of their contentions, reliance has been placed upon the case of **Amanullah V The State** (PLD 2009 Supreme Court 542).

5. I have heard the arguments of the parties, reviewed the record and considered the case law.

6. The delay in lodging the FIR has been explained by the fact that initially the police refused to lodge FIR and the complainant being an aggrieved person and just to get his FIR lodged, approached the Justice of Peace on 07.04.2023 and the Justice of Peace ordered the FIR to be

lodged on 17.04.2023 and accordingly the FIR was lodged on next day as such I find that the delay in lodging the FIR has been explained. In this case there are three eye witnesses being the complainant and his two sons to the act of sodomy committed with victim Nadir Ali who is also an eye witness in this case. The offences for which the applicant has been charged fall within the prohibitory clause. The fact that DNA report has proved to be negative, in my view is not of much importance in the face of three eye witnesses who have no enmity whatsoever or ill will with the applicant and have no reason to falsely involve him in this case. Even in the FIR it is stated that applicant was washed after the incident and as such it is not expected that there will be a DNA report resulting in corroborative evidence and in any event does not compare with direct ocular evidence of the eye witnesses.

7. I find that there is sufficient material on record to connect the applicant with the offences for which he is charged. There is no material to justify any malafide on the part of complainant. As such the pre-arrest bail of the applicant is recalled with immediate effect.

8. It is noted however that there are only four witnesses in this case and the charge has already been framed. The learned trial Court is directed to decide the matter expeditiously but in any event within a period of six (06) months from the date of receipt of this order. A copy of this order shall be sent to the learned trial Court viz. Additional Sessions Judge-II, Kotri by fax for compliance.

9. Needless to mention here that the observations made hereinabove are tentative in nature and will not prejudice the case of either party at trial.

10. Pre-arrest bail application is disposed of in above terms.

JUDGE

Tufail