

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No.1581 of 2023

Date	Order with signature of Judge
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For hearing of bail application

21.8.2023

Mr. Mumtaz Ali Khan Deshmukh advocate for the applicant
Mr. Zahoor Shah, Additional PG alongwith PI Sohail Ahmed Wagan SIO
Zaman Town Karachi, and SIP/IO Haroon Rasheed, PS Zaman Town
Karachi
Ms. Haseena Khan advocate for the complainant along with complainant
Muhammad Meezan
Dr. Kamran Khan from JPMC Karachi

Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No. 288/2023, registered under Section 364-A, 377, 302, and 34 PPC at Police Station Zaman Town. The earlier bail plea of the applicant has been declined by the learned VII Additional Sessions Judge (East) Karachi vide order dated 19.04.2023 in Cr. Bail Application No. 1710/2023.

2. The accusation against the applicant is that he along with his accomplices committed sodomy with his minor differently-abled son and thereafter committed his murder, such report of the incident was given to Police Station Zaman Town, with the narration that his son aged about 8/9 years was missing since 10.03.2023 and he could not find him, however, his brother took efforts and was informed that the dead body of the son of the complaint was lying in Car No. EE-955 Cultus, parked near Milk shop Raheemabad, PSO Petrol Pump Korangi Karachi, thereafter police recovered the dead body and referred it to Jinnah Post Graduate Medical Center for post mortem. The medico-legal report suggests that the victim was subjected to an act of sodomy and died due to asphyxia.

3. The applicant being aggrieved by and dissatisfied with the aforesaid bail declining order has approached this Court inter-alia on the ground that the applicant has been falsely implicated in the case. Learned counsel for the applicant submitted that there is one day delay in lodging the FIR as the incident had taken place on 10.1.2023, whereas the FIR was lodged on 11.3.2023, per learned counsel no plausible explanation has been furnished by the complainant for such inordinate delay. He has further argued that nothing incriminating has been recovered from the

possession of the applicant/accused, which could connect him with the alleged offense and there is no specific role against the applicant/accused. Further contended that neither the name of the applicant/accused nor any description has been mentioned in the FIR. He next argued that the applicant has not played any role in the commission of the alleged offense as the F.I.R. is against unknown persons. He has further contended that the present applicant/accused has been involved in the case on the extra judicial confession statement of the co-accused, therefore, any confession of the accused or co-accused made before the police under Article 38/39 of the Qanoon-e-Shahadat, Order, 1984, is not admissible against them until and unless the same is recorded u/s 164 Cr.P.C. before a Judicial Magistrate. He next argued that the complainant has exonerated co-accused Muhammad Shehzad vide affidavit of no objection dated 10.5.2023. It is also argued that the applicant/accused is not a hardened, desperate, or habitual offender; there is no sufficient reason to believe that the accused is guilty of the alleged offense, therefore, the case of the applicant/accused requires further inquiry. He argued that the co-accused has already been granted bail, therefore, keeping in view the rule of consistency the applicant/accused is also entitled to concession of bail. He further argued that the DNA test of the victim and the accused have not matched thus the case falls within the purview of further inquiry, hence no useful purpose will be achieved by detaining him in jail. Learned counsel emphasized that the medical report dated 13.04.2023 has been managed. He further submitted that the prosecution of the applicant in the present case is nothing but based on dishonesty and malafide and even from the contents of the FIR no case is made out against the applicant.

4. Learned APG assisted by the learned counsel for the complainant has submitted that the tentative assessment of material available on record, prima facie leads to a conclusion that there are no reasonable grounds exist to believe that it is a case of further inquiry. The bail application has been moved solely on the ground that the DNA test report is not matched. In this respect, he has submitted that the fingerprint report supports the prosecution case, however, he added that such reports were only corroborative and were required only when ocular testimony was doubtful. He next argued that no reason could be offered as to why the complainant would spare the actual offender and should instead substitute the applicant as accused in the murder of his minor son. He added that prima facie and for bail, it could not be said that the testimony offered by the PWs could admit any doubt. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and perused the material available on record.

6. The tentative assessment of the record reflects that the alleged offense occurred on 10.03.2023 and reported on 11.03.2023. The final cause of death as opined by the doctor is asphyxia due to the forcible closure-or passage leading to CRF and death. Forensic examination report dated 12.04.2023 prima facie suggest as under:-

iii) ***“The latent impression on the lifter marked as “B” individualization matched with the right thumb impression of Shehryar alias Raza on his suspect slip now marked as ‘XI’”***

7. In principle, DNA report requires deeper appreciation in terms of Section 156 (C) Cr.P.C. (Sindh Amendment Act), 2017 which reflects that in the case involved in the rape the DNA testing of the rape victim shall be mandatorily conducted by the police officer through the laboratories recognized by the government of Sindh and the fingerprint report received from the Sindh Forensic DNA Serology Laborite is as positive. It is appropriate to reproduce the same hereunder:

“156-C. Mandatory DNA Testing in Rape Cases. In the case involving the offense of rape- (a) the DNA testing of the rape victim shall be mandatorily conducted by a Police Officer through the Laboratories recognized by the Government of Sindh;

8. Prosecution has also relied upon the report of the Deoxyribonucleic Acid (DNA) Test/fingerprints matched *with the right thumb impression of the applicant*. DNA is a particle that encrypts the genetic information in all living beings and is the blueprint of an individual. It can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Generally, when the DNA profile of a sample found at the scene of a crime matches with DNA profile of the suspect, it can be concluded that both samples have the same biological origin so, in cases where a suspect is identified, a sample of that person's DNA can be compared to evidence collected from the crime scene. The results of this comparison may help establish that the suspect committed the crime.

9. It is the cardinal principle of law that whenever a sample for forensic test is obtained or taken into possession, same should be sent to a Forensic Laboratory without any unnecessary and unexplained delay, to rule out the possibility of any fabrication or tampering. Now, in our jurisdiction too, the Supreme Court has started encouraging us to have recourse to such modern scientific and forensic evidentiary

methods. In the decision of the Supreme Court in the case of *Ali Haider alias Papu v. Jameel Hussain and others* **PLD 2021 SC 362** has elaborated the importance of this modern-day scientific evidence in the following words:-

5. The most significant advancement in criminal investigation since the advent of fingerprint identification is the use of DNA technology to help convict criminals or eliminate persons as suspects. DNA as scientific evidence means 'deoxyribonucleic acid.' DNA can be found in the human body and samples from semen, hair, blood, and flesh can establish a DNA matching with the DNA of another human being. Each human being has a unique DNA pattern, which is acquired by inheriting it from the biological parents. DNA analyses on saliva, skin tissue, blood, hair, and semen can now be reliably used to link criminals to crimes ..In criminal cases, like rape, murder, etc., timely medical examination and proper sampling of body fluids followed by quality forensic analysis can offer irrefutable evidence. The criminal justice system is in search of the truth. The development of DNA technology furthers the search for truth by helping police and prosecutors in the fight against violent crimes. Through the use of DNA evidence, prosecutors can establish the guilt of the accused and at the same time, DNA aids the search for truth by exonerating the innocent."

10. Prima-facie, a positive forensic fingerprint report test is available on the file which establishes his connection with the alleged crime which is strong corroboration to the stance of the prosecution in identifying the applicant/accused. Besides the applicant has been booked on the premise that he with the help of his accomplices was indulged in committing sodomy with a minor boy namely Muhammad Hassan aged about 8/9 years. The witnesses have supported the case and medical evidence as well as the fingerprint report also supports the prosecution version so also circumstantial evidence was collected in the shape of Forensic reports.

11. The unnatural death of the deceased minor boy has been confirmed by MLO vide his opinion dated 11.03.2023 with the opinion that the minor boy was subjected to an act of sodomy. The offense for which the applicant is allegedly involved is a heinous offense against society and is increasing day by day in our country. The punishment for section 302 is death or life imprisonment as such an offense falls within the prohibitory clause of Section 497 Cr.P.C. The principles governing bail are clear in terms. Because of the exceptions provided in Section 497(1) Cr. P.C the learned counsel for the applicant has failed to make out a good case for grant of post-arrest bail in the light of sub-Section (2) of Section 497 Cr.P.C.

12. In these circumstances; I am of the considered view that the applicant has not made out his case for a grant of post-arrest bail.

Accordingly, the instant criminal bail application stands dismissed, with direction to the learned trial Court to expedite the trial and examine material witnesses within one month at least the MLO / Complainant must be examined in the intervening period. In case of non-compliance, the strong reason shall be furnished thereafter the applicant would be at liberty to repeat the bail.

13. The observations made hereinabove are tentative only to decide the instant bail application, which shall not, in any manner, influence the learned Trial Court at the time of the final decision of the subject case.

JUDGE

Shahzad/*