

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Crl. Bail Application No.D-58 of 2023***

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| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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1. For orders on O/objection at flag-A.
2. For hearing of bail application.

***Present:-***

*Mrs. Justice Rashida Asad, J.*

*Mr. Justice Khadim Hussain Soomro, J.*

Date of hearing **19.09.2023**

Mr. Abdul Ghani Abro, Advocate for applicant.

Mr. Aftab Ahmed Shar, Addl.P.G, for State.

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**ORDER**  
**20.09.2023**

***KHADIM HUSSAIN SOOMRO, J;*** Through instant bail application, applicant/accused *Ghulam Muhammad @ Ghulam son of Allah Dad Mehrani* seeks post-arrest bail in Crime No.19/2023 Police Station, Kumb District Khairpur for offence punishable under sections 376-A, 294 PPC and 21 Prevention of Electric Act, 7/ATA. Earlier his bail application was declined by Anti-Terrorism Court, Khairpur Mir's vide order dated 19.07.2023.

2. The facts in brief necessary for disposal of instant bail application are that on 31.01.2023 at 1630 hours complainant SIP Muhammad Pannah Gopang lodged the FIR at Police Station, Kumb on behalf of the State stating therein that on the aforesaid date, he, along with his staff, was present at the Police Station and observed that the applicant engaging in the act of committing rape, and sexual relations (Zina) with females, and after recording the videos, uploading such films on the social media site Facebook which was witness by the complainant. These actions were deemed to be degrading and disrespectful towards human dignity and this action also resent the sentiments of the public at large. Hence complainant lodged the FIR on behalf of the State.

3. Learned Counsel, *inter alia*, contended that the name of victim who had been allegedly raped is not mentioned either in the FIR or any other investigation papers and no incriminating evidence/material has been collected by the I.O, during investigation; that Section 376 PPC is not

applicable in the present case, as no name of any victim is mentioned; that not a single girl came forward to corroborate the version of the complainant; that the Memory Card which was sent to the Forensic Expert is owned by the complainant, therefore, he prayed for grant of bail to the applicant. In support of his contentions he relied upon case of *Dr. Farrukh Sher Khan v. The State (2018 PCr.LJ 132)* and *Rana Imran Jameel v. The State (2008 MLD 1044)*.

4. Conversely, learned Additional Prosecutor General appearing for the State opposed for grant of bail on the ground that no doubt name of a victim is not mentioned in the FIR but offence as alleged is against the society. The learned Additional P.G further contented that the applicant engaging in the act of committing rape, and sexual relations (Zina) with females, and after recording the videos, uploading such films on the social media site Facebook which was witness by the complainant; that offence falls within the prohibitory clause of Section 497 Cr.P.C. therefore, applicant is not entitled for grant of bail. By contending so, he prayed for dismissal of bail application.

5. Heard learned Counsel for the parties and perused the material available on record.

6. It is alleged that applicant/accused on-air the pornographic videos through his mobile phone on Social Media but there is no private person who either lodged such complaint against the applicant nor act as a witness of the incident. The description of the alleged mobile phone through which the naked videos were uploaded and shared on Social Media not mentioned in the FIR . Neither said mobile was recovered from the applicant/accused nor same was sent to Forensic Expert for its examination. Furthermore, the Memory Card containing the movies was submitted to the Forensic Expert, and the same was owned by the complainant rather than the applicant/accused. Moreover said Memory Card was sent on 12.05.2023 for its examination after the lapse of four months. No from general public came forward to lodge a complaint against the applicant accused with regard to the allegations levelled in the FIR. Indeed, neither any girl came forward to record statement against the accused of his being involvement of blackmailing nor any individual from general public emerged to record that their sentiments were injured by the applicant/accused. The ssection 376 PPC, *Prima*

*facie* is not attracted to the facts of the case in hand. In these circumstance *Prima facie*, there is no evidence which link the applicant/accused with the commission of alleged offence. The applicant/accused is Government servant working in the Irrigation Department; however, there is no record of the applicant/accused has ever been involved in such type of cases. The offence as alleged does not fall within the prohibitory clause of Section 497 Sub-Section(2) Cr.P.C. The applicant/accused is behind bars since his arrest and trial has not yet concluded. Investigation in the case was complete therefore, accused was no longer required to Police for further investigation as such the incarceration of accused/applicant would serve no useful purpose and case against him fell within the ambit of further inquiry.

6. In view of above, we are of the considered view that applicant/accused has been able to make out a case for grant of bail. Accordingly, instant bail application is allowed. The applicant/accused, namely, *Ghulam Muhammad @ Ghulam Mehrani* is granted post-arrest bail subject to his furnishing solvent surety in the sum of Rs.200,000/- (Rupees Two lacs) and PR bond in the like amount to the satisfaction of the trial Court. These are the reasons of our short order dated **19.09.2023**.

7. Needless to mention that observation made here-in-above are tentative in nature. Trial Court shall not be influenced while deciding the case on merits.

Bail application stands disposed of.

**J U D G E**

**J U D G E**

*Ihsan/PA\**

**Furthermore, the prosecutrix/victim did not appear before W.M.L.O for her medical examination nor she produced any Medical Certificate therefore, malafide is apparent on her part of complainant to falsely implicate the present applicant**