

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 2334 of 2024

Applicant : Hafiz Ahmed @ Noni
through Mr. Fahad Hussain Mirani,
Advocate

Respondent : The State
through Ms. Robina Qadir,
Deputy Prosecutor General Sindh
a/w SIP Shakeel Ahmed

Complainant : Muhammad Amir, in person

Date of hearing : 11th December, 2024

Date of Order : 16th December, 2024

ORDER

Omar Sial, J: On 29.05.2023, nine-year-old Mohammad Anas told his father, Mohammad Amir, that two days ago, on 27.05.2023, when his mother had sent him to buy groceries, Hafiz Ahmed alias Noni and Bilal Ahmed took him to a house where Bilal hit him whereas the Hafiz stripped him and abused him. On Amir's complaint, the Surjani Town police station registered F.I.R. No. 518 of 2023 under sections 377 and 34 P.P.C. on 30.05.2023.

2. Hafiz Ahmed approached the learned 1st Additional Sessions Judge, Karachi West, seeking bail, but his application was dismissed on 10.09.2024. He has now approached this Court seeking post-arrest bail.

3. Learned counsel for the applicant has argued that the F.I.R. was registered three days after the alleged incident; there was no eye-witness to the incident; the only evidence against the applicant is the victim's statement, and as the victim is a child, his statement cannot be relied upon per the principle laid

down in *The State vs Farman Qureshi and others*, reported at PLD 1995 SC 1; the medical reports show that no semen was detected and that no evidence of sodomy was found.

4. The learned Deputy Prosecutor General argued that a heinous offence had been committed. She confirmed that the only evidence available at the moment was the victim's statement and that it could not be discarded. The complainant, present with the victim, did not want to engage counsel and relied on the learned Deputy Prosecutor General's arguments.

5. I have heard the counsels and perused the record. My observations and findings are as follows.

6. Upon a tentative assessment, it appears to be correct that the medical reports filed in the case do not prima facie show the act of sodomy having been committed. This would not, however, ipso facto mean that the applicant is innocent. The victim had not complained of sodomy (an offence under section 377 P.P.C.). The language used in the F.I.R. suggests that what he complained of was sexual abuse (an offence under section 377-A P.P.C.). Sexual abuse would not necessarily entail physical injury to the victim. This observation should not be interpreted to mean that a definite finding is being given against the applicant.

7. I am not inclined to agree with the learned counsel that the delay in registering the F.I.R., in this case, entitled the applicant to a bail concession. The victim was first beaten by his mother for not getting the groceries he had been sent for, and subsequently, he took time to reveal to his father what had transpired. The delay has been explained. Indeed, the learned trial court will affirmatively decide this issue when it has evaluated the evidence produced at trial.

8. Although the Supreme Court has observed that a child's evidence must be treated with great care and caution, it would be incorrect to say that the Court has laid out a principle in the said case that a child's testimony cannot be taken into account.

9. Notwithstanding the above observations, the learned trial court has granted co-accused Bilal bail. Bilal's role (though appearing different in the F.I.R. (i.e., restricted to slapping the victim) has been enhanced to committing the same sexual acts as Hafiz by the victim himself in his section 164 Cr.P.C. statement. The State or the complainant has not challenged the grant of bail. On the ground of consistency, the applicant Hafiz should also have been given a similar concession.

10. On the grounds of consistency, coupled with the absence of any corroborating evidence and the fact that the applicant himself is a juvenile, I believe that the applicant has made a case for a grant of the concession of post-arrest bail on consistency and further inquiry. He is accordingly admitted to post-arrest bail subject to his furnishing a solvent surety of Rs. 500,000 and a P.R. Bond in the same amount. As an additional condition of bail, the applicant shall not in any manner directly or indirectly contact or interact with the victim or his family till the trial is concluded. If evidence is provided that the latter condition has been breached, the learned trial court would be free to recall the concession.

JUDGE