

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Application No. S – 669 of 2018

Before:

Mr. Justice Zulfiqar Ahmad Khan

Date of hearing: **31.12.2018**

Syed Ashique Ali Shah, Advocate for the applicants / accused.
Mr. Aftab Ahmed Shar, Additional Prosecutor General for the State.

ORDER

ZULFIQAR AHMAD KHAN, J. – Through the present bail application, the applicants seek post arrest bail in Crime No.173/2018 registered at Police Station Kotdiji District Khairpur for offences under Section 371-A and 371-B, PPC.

2. Relevant facts of the case are that on 26.06.2018 at 12:00 hours, a police party of PS Kotdigi was proceeded for patrolling in the area. They received a spy information about a rented house of Niaz Hussain and his son Nadeem where they used to sell ladies for prostitution and availability of some ladies was also communicated to them. They reached the pointed place at about 13:00 hours, where they saw Niaz Hussain who ran in a street after seeing the police. Police entered the house and found three males and three females there. Ladies were demanding money from gents. Due to non-availability of private *mashirs*, police officials were associated to act as *mashirs*. Accused introduced themselves as Nazakat, Mohabbat, Nadeem Hussain, Mst. Husna, Mst. Shabnam and Mst. Naseem. Accused Nadeem confessed that he and his father Niaz Hussain used to sell females for prostitution. Same confession was made by the ladies for using themselves for prostitution and they claimed it as their business. Accused Nazakat and Mohabbat admitted their presence for committing prostitution. Police recovered Rs.500/- from Nazakat, Rs.600/- from Mohabbat and Rs.150/- from Nadeem. No recovery of amount was made from the ladies. Resultantly, the F.I.R. under Section 371-A and 371-B, PPC was registered.

3. Learned counsel for the applicants submitted that in fact accused Mst. Naseem is daughter of Niaz Hussain, whereas, accused Nadeem is son of Niaz Hussain and Mst. Shabnam is wife of accused Nadeem and daughter-in-law of Niaz Hussain as such a family unit, whereas, Mst. Husna

is their aunt and they were peacefully residing in the rented premises where the said rental arrangement was even duly registered with the area police and in support of that contention, the 'Rent Form' from police are attached at page 27 to page 29. *Nikahnama* of accused Nadeem and accused Mst. Shabnam is attached at page 25. Learned counsel stated that in fact at the first floor of the said house, the landlord runs his clinic and even he was present at the time of the incident. He then stated that accused Mohabbat was a neighbourer who came to see them and while raising allegation that a prostitution den was operating in that premises, meager amounts of Rs.150/- from the pocket of accused Nadeem and Rs.600/- from accused Mohabbat and Rs.500/- were found with Nazakat, where, no money was found with any of the ladies.

4. Learned counsel further stated that it was alleged that the offence took place in a broad daylight in a thickly populated area, however, no private *mashir* was associated and even the landlord who was present at the first floor was not made *mashir* which is violation of Section 103, Cr.P.C. He further stated that no warrants were taken for conducting the said raid in a household which is protected by law. He stated that the alleged confessional statements mentioned in the F.I.R. are false and be that as it may, there is *plethora* of case law which makes such a confession illegal in the eyes of law and not permissible under the Evidence Act. In support of his contentions, he placed reliance upon case reported in 2014 YLR 1462, 2009 YLR 60, 2008 P.Cr.L.J 856 and 2012 P.Cr.L.J 638.

5. Learned Additional Prosecutor General opposed the instant application by stating that the applicants failed to show any enmity with police and raised question about the presence of a stranger man in the house. He next stated that the offences fall within prohibitory clause of Section 497 Cr.P.C.

6. Heard the counsel for the applicants, the learned Addl P.G. and perused the material available on record.

7. As per the contents of the FIR, spy information reached to police and on this basis the residence of the applicants was raided. Admittedly, sufficient time was available to police to arrange private *mashirs*, and the area being thickly populated, *mashirs* may have been easily taken from the place of incident, for which no effort has been made. The Constitution of Islamic Republic of Pakistan, 1973 through Article 34 protects the unity of a family and does not expose them to any intervention from outsiders. In the

case at hand, except for applicant Mohabbat, all others relate to each other. The very ingredient of Section 371-A and 371-B, PPC is that there has to be an intention that the person would be used for the purpose of prostitution or illicit intercourse. On perusal of the record, I did not find any written complaint from the public or any oral statement of any independent person of the locality recorded by the complainant to support his version. Nobody from the locality has been associated with the alleged raid proceedings spy information, so much so that landlord of the house has not been examined who runs a clinic at the first floor of the same house. Similarly, none from surrounding houses has been examined by the complainant in support of his version. No material evidence is available to show that applicants are involved in buying and selling person for the purpose of prostitution, therefore, in the circumstances, application of section 371-A and 371-B PPC is a matter which requires further probe. Provisions of Sections 371-A and 371-B PPC only apply to persons who sell or purchase any person with the intent that such person would be used for the purpose of prostitution or illicit intercourse. When learned DPG was asked about the ingredients of the above two offence, he fairly and frankly conceded that no such evidence appears to be available at hand. Besides, neither any search warrant has been obtained nor any notables of the locality has been associated with the alleged. No doubt, the evidence of police officials is as good as private persons but here in this case when the availability of private persons is not denied at the place of arrest and recovery, therefore, the non-joining of private person to witness the event, creates doubt. In the circumstance the alleged raid cannot be termed any better than an intrusion, which is an act prohibited by the Constitution, law and the Holy Quran. The Legislature in their wisdom, having regard to the existing norms of the society, were conscious of the fact that if cases under such offences are permitted to be registered on spy information or even on the complaints lodged by anonymous persons, such practice would encourage false reports involving innocent men or women for ill designs. Learned Addl.PG has argued that offence, under which the applicants have been booked falls within prohibitory clause of Section 497 Cr.P.C., therefore, on this ground applicants are not entitled for bail. Reverting to these contentions, it suffices to say that, there is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed such offences, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of bail granted to him, but no satisfactory reparation can

be offered to an innocent man/woman for his/her unjustified incarceration at any stage of the case albeit his acquittal in the long run. The prosecution has the uphill task to prove that in premises where female were present with their brother, husband and father-in-law, they indulged in the act of offering their body for promiscuous sexual intercourse for hire to persons who hardly have any reasonable sums in their pockets.

8. Perusal of the F.I.R also shows that personal search of ladies accused in this case did not show recovery of any monies. Under these circumstances, in my tentative view many aspects of the case require further probe. It is settled law of the criminal justice that every accused should be presumed as innocent until and unless he/she is found guilty of the alleged charge. It is also settled law that if any doubt is created in prosecution case, its benefit must be extended to the accused, even at bail stage.

9. In my tentative view, police has involved the applicants without any iota of evidence, by violating the statutory provisions of law, also encroached the fundamental right of the petitioner and others guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan, 1973, providing that the dignity of man and subject to law the privacy of home is inviolable. Such fundamental rights are whenever violated and complained of, the court must step into and investigate under constitutional jurisdiction to pass such order as may be found just, legal and equitable. Human dignity, honour and respect is more important than physical comforts and necessities and no attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life and more particularly on the part of the police officials, who are otherwise bound to protect the rights of citizens, should be allowed to go with immunity.

10. While at the stage of the bail, no deeper appreciation of the fact is permissible, but at the face of it, in my humble view, the case required further inquiry into the guilt of the accused persons, and for such reasons, I was inclined to exercise the discretion of bail in favour of the applicants and allowed the their such application through my short order dated 31.12.2018 by each one of them furnishing a bail bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the trail court. These are the reasons of the said order.

Abdul Basit

J U D G E