

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 2783 of 2024

Date

Order with Signature of Judge

1. For orders on office objection.
2. For orders on M.A No.16408/2024.
3. For hearing of Bail Application

26.02.2025

Mr. Aijaz Ali Khaskheli, Advocate along with Applicant (on bail).
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh along with
SIP Allah Rakhio.
Mr. Faisal Ahmed A. Memon, Advocate for the Complainant.

ORDER

ALI HAIDER 'ADA'-J:- Through this bail application, applicant Deedar Ali Bhurgari seeks pre-arrest bail in Crime No.119 of 2024 for the offence punishable under Section 343, 377, 506/2 & 34 PPC registered with P.S Chuhar Jamali. The applicant preferred his anticipatory bail before the Court of Sessions wherefrom it was assigned to Addl. Sessions Judge-I, Sujawal, who after hearing the parties, has turned down his request through order dated 22.11.2024; hence, instant bail application has been maintained.

2. The brief facts of the prosecution's case are that on 03.10.2024 when the complainant reached at his house, it was informed to him that his son Yasin aged about 14/15 years was not present as he along with his witnesses searched about him, as on 09.10.2024, he along with his witnesses met with accused party as they brought his son and went towards Sujawal side. The victim/his son disclosed that the applicant along with others tied his hands and picked him away and then committed sodomy and later on they rescued him. The complainant initially approached before the Ex-Officio Justice of Peace and after getting the order, instant FIR was lodged.

3. Learned counsel for the applicant submits that the statement under Section 164 of the Cr.P.C. was not recorded, and the FIR was lodged on 26.10.2024, whereas the date of the alleged incident is mentioned as 03.10.2024, as there is almost a delay of 23 days. He further submits that despite obtaining an order from the learned Ex-Officio Justice of Peace on 24.10.2024, there is a delay of 2 days in taking further action, without any explanation. Learned counsel also submits that the alleged victim was missing on 03.10.2024, and the complainant party remained totally silent until 09.10.2024, which creates doubt about the prosecution's story. Learned counsel further submits according to the medical officer's opinion, there are no any violence or marks on the victim. As there are no eyewitnesses to the incident and only the statement of the victim, the applicant, along with others, was implicated, further contends that due to a prior dispute with the co-accused, the FIR was lodged with malafides and without any cogent evidence, name of the applicant was transpired in the FIR. Learned counsel further submits that on 22.11.2024 the learned trial Court dismissed his bail application not only to submit the required surety but also dismissed the same on merits, therefore, invoked the jurisdiction of this Court as the bail application of the applicant was turned down even on merits. Lastly, the learned counsel prays for the confirmation of the bail granted to the applicant/accused

4. On the other hand, learned counsel for the complainant submits that the applicant's name is specifically mentioned in the FIR, while the other co-accused are still absconders. The witnesses have fully supported the prosecution's case, and the applicant is not entitled to the concession of pre-arrest bail, as he has failed to show any malafide. In support of his contention, learned counsel places reliance upon the cases of AMANULLAH Versus THE STATE (PLD 2009 SC 452) and WAJID Versus The STATE (2023 YLR Note 60).

5. The learned Deputy P.G., Sindh, also supports the contentions of the learned counsel for the complainant and submits that although the DNA report is negative, the statement of the victim is sufficient as DNA report is negative due to lapse of time. She further submits that the victim's statement, recorded on 26.10.2024, fully supports the

prosecution's case. Lastly, the learned counsel prays that the bail granted to the applicant be recalled

6. Heard arguments and perused the material available on record.

7. The record reflects that the victim was allegedly missing from 03.10.2024, and on 09.10.2024, the alleged victim met with the complainant and disclosed the entire story. This period is very essential in order to report the incident before the police as one young boy aged about 14/15 years was missing but no one made any complaint about such missing/kidnapping. Further, the statement of victim is only on the point that accused party committed sodomy from 03.10.2024 onwards but the medical examination reflects that no anal potential injuries are seen and DNA is also negative in nature while in Modi's jurisprudence, 26th Edition in Chapter 32 of Section (i), the examination of victim in order to ascertain the rape, abrasions on the skin near the anus with pain in walking and on defaecation, were to be found. Thus, the injuries are extensive and well defined in cases where there is a great disproportion in size between the anal orifice of the victim and the virile member of the accused, while the incident shown that sodomy, as alleged, was committed for a long period from 03.10.2024 for onwards and accused are three in numbers, thus, the aspect as prescribed in Modi's jurisprudence is lacking in instant case, as need evidence of medical officer as well be determined at the time of trial. Even the DNA report is one of the significant documents, it is negative in nature. Once, the case falls under the grant of bail, then no useful purpose would be served by keeping the accused behind bars.

8. The case law relied upon by the learned counsel for the complainant is contrary. In the case of WAJID versus The STATE (supra), the FIR was lodged promptly, witnesses were examined, the investigating officer collected bloodstained cloths, and the victim, who was admitted to the hospital for a check-up, was examined by a doctor who opined that the victim is feeling pain However, this aspect is completely lacking in the instant case. Further, the learned counsel for the complainant relied on the case of AMANULLAH versus The STATE, which is also not applicable, as the MLO examination in that case revealed that the hymen of the victim girl was found torn in multiple places.

9. In view of such circumstances, the applicant has made out his case for confirmation of his bail. Accordingly, instant bail application is hereby allowed; interim bail granted earlier to applicant on 28.11.2024 is hereby confirmed on same terms and conditions.

10. Applicant present before the Court is directed to continue his appearance before the trial Court without negligence and in case, he may misuse the concession or may tamper with prosecution's evidence then the trial Court would be competent to take legal action against him as well as his surety.

11. It need not to iterate that the observation(s) made hereinabove is/are tentative in nature and shall not prejudice the case of either party during trial.

JUDGE

Zulfiqar/P.A