

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Criminal Bail Application No.S-371 of 2021.

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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	For orders on office objections. For hearing of main case.
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29.10.2021.

Mr. Ghulamullah Chang advocate for the applicant.  
Mr. Pir Bux Bhurgari advocate alongwith complainant.  
Ms. Sobia Bhatti, Assistant Prosecutor General.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Complainant, a laborer and married to Mst. Irfana aged about 21 years, was returning to his village on motorcycle after visit to his relatives in Golarchi on 27.03.2021 alongwith his wife and three children when near his village at Sim-Nala he got a flat tyre. Leaving behind his family he went to a nearby town to get tyre repaired, when he returned at about 09 p.m. he saw applicant committing zina with his wife and his children crying. Applicant however, seeing him fled away.

Learned defence counsel has argued that the applicant, who is not present today, is innocent and has falsely been implicated in this case; there is delay of three days in registration of FIR; it is a night time incident but no source of light has been shown; story is unbelievable as medical report is in negative; the parties are relative inter-se and applicant on account of past enmity has implicated the applicant in this case. He has relied upon case law reported in 2020 SCMR 761 (Babar versus The state).

On the other hand learned counsel for complainant and learned APG have opposed bail to the applicant stating that he is nominated directly for committing rape with wife of complainant and such allegation is supported by medical evidence which shows that wife of complainant was subjected to sexual intercourse and applicant was found contributor of Semen found on vaginal swab of victim.

I have considered submission of parties and perused material available on record including the case law. In my view, there is sufficient evidence against applicant, he is not only implicated in the case by the

complainant but by the victim herself also, who has fully supported the story in her 161 Cr.P.C. statement. Her story is further supported by medical evidence. In the investigation DNA profile of the applicant was taken. The final report shows that victim was subjected to sexual intercourse and applicant was found contributor of semen / sperm fractions identified on vaginal swab of the victim. The offence with which the applicant has been charged is heinous and carries punishment of life imprisonment. In absence of any malafide on the part of complainant or the record showing that the applicant has been falsely implicated in this case, I am of the view that he is not entitled to extra-ordinary concession of pre-arrest bail which relief is based on equity and is to be extended to only those accused who on the face of record are shown implicated falsely in the present case. As discussed above, no such record is available, however in the present case. Accordingly, this bail application is dismissed and ad-interim pre-arrest bail granted to the applicant vide order 07.05.2021 is hereby recalled.

The observations made hereinabove are tentative in nature and shall not influence the trial court while deciding the case on merits.

JUDGE