

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Bail Application No.S-512 of 2018
Cr. Bail Application No.S-665 of 2018

Date	Order with signature of Judge
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For hearing of bail application

Mr. Imdad Hyder Solangi, Advocate for the applicants in both
Bail Applications
Mr. Nusrat Hussain Memon, Advocate for complainant
Syed Sardar Ali Shah Rizvi, a/w Inspector Raja Naveed Sarfraz
S.H.O. Police Station Moro

Date of hearing: 29.04.2019
Date of order: 29.04.2019

ORDER

ZAFAR AHMED RAJPUT, J:- By this common order, I intend to dispose of both the aforementioned Criminal Bail Applications as the same are arising out of Crime/FIR No.198/2018, registered at Police Station Moro, under Sections 452 and 365-B, P.P.C.

2. Through Criminal Bail Application No.S-512/2018, applicant/accused Altaf Hussain son of Arz Muhammad Solangi, has sought pre-arrest bail in the aforementioned Crime. He was admitted to ad-interim bail by this Court vide order dated 10.09.2018, now he seeks confirmation of the same, while by means of Criminal Bail Application No.S-665/2018 applicant/accused Saeed son of Asghar Solangi, seeks post-arrest bail in aforementioned Crime.

3. Brief facts of the prosecution case are that on 08.07.2018 complainant Ghulam Nabi Solangi recorded the aforementioned FIR, stating therein that on 01.07.2018 he along with his wife Mst. Irshad, daughters Mst. Zakia, aged about 14 years, Mst. Rafia, aged about 11 years and other inmates of the house were available in the house when at about 11.00 a.m, accused persons namely Altaf Hussain son of Arz

Muhammad, Saeed son of Asghar, Sajid son of Ghulam Mustafa, Akhtiar son of Ramzan and Fayyaz son of Qadir Bux duly armed with pistols entered into the house and kidnapped Mst. Zakia and Rafia for committing Zina with them as the complainant had refused to give their hands to them. It is further alleged that the accused persons also caused butt blows of pistols to son of the complainant namely Afaq.

4. Learned counsel for the applicants has mainly contended that the applicants are innocents and have falsely and malafidely been implicated in this case by the complainant; that there is delay of seven days in lodging of FIR which has not been explained by the complainant, hence deliberation and consultation in lodging of FIR cannot be ruled out; that applicant Altaf Hussain is serving in Police department and on the alleged date of incident he was on his duty at District Prison Dadu which fact is evident from the certificate of duty issued by Incharge District Prison Dadu along with muster-roll; that blood samples of both the applicants were obtained during investigation and sent to Forensic & Molecular Biology Laboratory for DNA Testing, which as per report of the Laboratory did not match with the vaginal swabs samples of victims Zakia and Rafia and their blood sample and their clothes, hence it is a fit case of further enquiry.

5. On the other hand, learned counsel for the complainant has vehemently opposed the applications on the ground that both the applicants are nominated in the FIR with specific role and even both the victims namely Zakia and Rafia have nominated them in their statements recorded under section 164 Cr.P.C. on 08.08.2018 wherein they have categorically stated that the accused persons took them to Dadu where they confined them at unknown place and committed Zina with them for five days then they sold them out to one Shoukat Lakher who also committed Zina with them and he used to keep them in intoxicated

condition and later on Shoukat Lakher sold them out at Karachi to Usman Punjabi who also committed Zina with them, however on 14.07.2018 at 9.00 p.m when he was in deep sleep, both the victims managed to escape and reached Moro to their parents; that the medical evidence is well supported with the ocular version of the complainant and merely negative DNA test does not make the applicants entitled to the concession of bail.

6. Learned DPG also adopted the arguments of learned counsel for the complainant and opposed the grant of bail to applicants.

7. Heard the learned counsel for the parties and perused the material available on record.

8. It appears that both the alleged victims appeared before M.L.O. for their medical examination on 19.07.2018 and as per medical report their hymens were ruptured, however no mark of violence was seen. Though both the alleged victims have stated in their statements under Section 164 Cr.P.C recorded by the Judicial Magistrate Moro on 08.08.2018 that both the present applicants committed Zina with them persistently for five days but DNA report of both the applicants in this regards is negative and as such the final medical opinion of M.L.O. is that *the sexual acts have been done upon said victims but the present applicants are not contributors of DNA/sperm fraction of virginal swabs and cloths of victims*. Hence the guilt of applicants call for further enquiry as envisaged in Sub-section (2) of Section 497 Cr.P.C. Accordingly, interim bail granted to applicant Altaf Hussain in Criminal Bail Application No.S-512/2018 vide order dated 10.9.2018 is confirmed on the same terms and conditions, while applicant Saeed Solangi in Criminal Bail Application No.S-665/2018 is admitted to bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousands) and P.R bond in the like amount to the satisfaction of the trial Court.

9. Needless to mention here that in case the applicant/accused in any manner misuses the concession of bail, the trial court shall be a liberty to recall his bail after serving him requisite notice and that the observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

Both the aforementioned Bail Application stand dispose of.

JUDGE

Suleman Khan/PA