

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

Cr. Bail Application No. S- 538 of 2020

<b>DATED</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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24.07.2020

Mr. Aslam P. Sipio, Advocate for applicant.

Ms. Sobia Bhatti, A.P.G. for the State.

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**ZAFAR AHMED RAJPUT, J.-** Through instant criminal bail application, applicant Sudheer son of Fateh Muhammad seeks post arrest bail in Crime No.24 of 2019, registered at P.S Oderolal Village for offence u/s 377, 34 PPC. His earlier bail application bearing No.212 of 2020 was rejected by the learned Sessions Judge, Matiari vide order dated 08.05.2020. Hence the instant application for post arrest bail.

2. The allegation against the present applicant as disclosed by complainant in his FIR is that on 13.06.2019, his son Amardas (victim) told him that on the day of incident he alongwith his uncles was going for cutting grass; he was busy in work and his uncles were at some distance, when accused Azeem having pistol in his hand and the present applicant having sickle (DANTA) emerged there. It is further alleged that present applicant caught hold him while accused Azeem removed his Shalwar and committed sodomy.

3. After hearing the learned counsel for the applicant and A.P.G. for the State and perusing the material available on record with their assistance, it appears that alleged incident is said to have taken place on 13.06.2019 whereas FIR thereof was lodged on 15.06.2019 after the delay of two (02) days though the distance between place of incident and police station is 2 ½ kilometre hence due deliberation and

consultation on the part of complainant cannot be ruled out. The specific role of committing Sodomy is against co-accused Azeem who per learned counsel is in custody and the role against present applicant is that he facilitated the co-accused by holding the victim. Hence, vicarious liability and common intention is to be determined at the time of trial whether the present applicant has participated in the commission of offence or not. Applicant is in custody since the date of his arrest and no fruitful purpose would be served to keep him in custody for an indefinite period. Challan has been submitted before the trial court and applicant is no more required for further investigation.

4. The upshot of above discussion is that applicant has made out a good prima facie case for his release on bail within the ambit of sub-section 2 Section to Section 497 Cr.P.C. Consequently, instant bail application is hereby allowed. The applicant shall be released on bail subject to his furnishing solvent surety in the sum of Rs.50,000/- (Rupees fifty thousand) and P.R bond in the like amount to the satisfaction of learned Trial Court.

5. The observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of trial.

**JUDGE**

Tufail