

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-394 of 2025

Applicants : 1) Riaz Hussain son of Wali Muhammad,
2) Wajid son of Wali Muhammad,
3) Shoaib son of Shah Baig
Through Mr. Allah Dino Kubar, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 22.08.2025
Date of order : 03.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J—Applicants Riaz Hussain, Wajid and Shoaib seek pre-arrest bail in a case bearing crime No. 32 of 2025, for offences under Sections 365-B, 363, 148, and 149 PPC, registered at PS Setharja, Khairpur. Applicants were enlarged on Interim bail by this Court on May 14, 2025 and today same is fixed for confirmation or otherwise. Prior to this, bail plea of applicants was declined by the learned Additional Sessions Judge-IV, Khairpur, on April 30, 2025.

2. The complainant, Mujahid Ali, alleges that on the night of March 20, 2025 at about 12:30 a.m., armed persons entered his residence at Village Hamid Kubar, Taluka Mirwah, District Khairpur and at gunpoint abducted his wife, Mst. Saima, and their one year daughter, Hareem Fatima, placing them in a white vehicle and departing the scene. Despite the presence of multiple adult family members, no complaint or report was made to the police or local elders until March 22, 2025 at 6:30 p.m., resulting in an unexplained delay of nearly forty-two hours before registration of the FIR at the nearest police station. This period of silence by the entire household casts serious doubt on the immediacy and genuineness of the prosecution's grievance, suggesting possible after-thought or collusion.

3. Learned counsel for the applicants submitted that the prosecution's case is fundamentally weakened by contradictions between the statements recorded under Section 161 Cr.P.C by the complainant's witnesses and the statement of Mst. Saima under Section 164 Cr.P.C. The former describe one timeline, mode of entry, and sequence of events, whereas the latter recounts a different time of arrival, manner of approach, and asserts that after her

abduction she willingly contracted a marriage (*Nikah*) with co-accused Fayyaz Hussain. The victim's own averment, captured in a free-will marriage affidavit executed on March 22, 2025, denies any coercion or threat by the present applicants and attributes her fear exclusively to her relatives. Such pro and contra elements in the victim's two statements on the same day undermine the core allegation of forcible abduction and give rise to a grave prima facie doubt as to the very occurrence of the offence alleged against these applicants. The learned counsel further urged that the delayed FIR, absence of any contemporaneous complaint, and the wholly interested status of all prosecution witnesses call for cautious scrutiny at the bail stage. He emphasized that the applicants are long-standing residents of District Khairpur, possess fixed addresses, have no criminal record, and will abide by any conditions imposed by this Court.

4. The learned DPG argued that the offence is of a heinous nature, involving abduction of a woman and her minor child for the purpose of rape or forced marriage, thereby attracting severe punishment. He maintained that the delay in lodging the FIR was caused by shock and fear, and that the Section 164 Cr.P.C. statement of the victim, having been recorded freely before the Magistrate, must be afforded considerable weight. He cautioned that if released on bail, the applicants might tamper with evidence or intimidate witnesses.

5. This Court has given anxious consideration to the submissions and perused the record. The victim's Section 164 Cr.P.C. statement does support certain aspects of the complainant's narrative, yet her contemporaneous execution of a free-will marriage affidavit directly contradicts the prosecution's case of coercion against the present applicants. The irreconcilable differences between the timelines and modes of abduction in the Section 161 and Section 164 statements go to the heart of the alleged offence and create a serious question mark at this preliminary stage. The unexplained delay of nearly two days before lodging the FIR, despite the presence of numerous adult eyewitnesses, further erodes confidence in the prosecution's account. Moreover, the fact that all witnesses are close relatives of the complainant necessitates caution in accepting their evidence at the bail stage without independent corroboration. The applicants have demonstrated fixed abode, surrendered themselves to the judicial process, and no evidence suggests a risk of absconding or interfering with the prosecution's case if released on bail. In

light of the authoritative principle laid down by the Supreme Court in *Rana Muhammad Arshad Vs. The State (PLD 2017 SC 429)*, which permits grant of pre-arrest bail where material on record raises a grave doubt as to the commission of an offence, this Court finds that the applicants have discharged their burden of establishing a prima facie case for bail.

6. Nothing is on record to suggest; applicants have misused the concession of interim relief. The case has already been challaned and applicants are no more required for investigation. In the circumstances, *prima facie* applicants have succeeded to make out case for bail. Accordingly, interim bail granted to the applicants is hereby confirmed on the same terms and conditions.

7. Needless to mention, observations made above are tentative in nature and shall not affect the case of either party at trial.

J U D G E