

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
1st Cr. Bail Application No. S- 169 of 2017

Applicants: Azeem Solangi & 04 others through
Mr. Mujahid Ali Jatoi, Advocate,

Respondent: The State through Miss Rubina Dhamrah, ADPP.

Date of Hearing: 24.11.2017

Date of Order: 24.11.2017

ORDER

Muhammad Saleem Jessar, J.-Through instant bail application, applicants seek their release on bail in Crime No. 26/2016 Police Station Radhan Station (Dadu) for offence under section 365-B, 496, PPC. The bail plea was raised on behalf of the applicants before the trial Court but their request was declined by order dated 08.4.2017. The case, as reported, has already been challaned by police on 07.5.2016 and 08.6.2016 respectively. Now same is pending for trial before the Court of 2nd Additional Sessions Judge, Mehar vide Sessions Case No. 460/2016 re. State v. Ashique Solangi & others.

2. The crux of the prosecution case, as unfolded by complainant Khadim Hussain in the F.I.R is that, on the fateful night at about 2-00 a.m. upon commotion inside their house complainant, his son and daughter-in-law Mst.Saba (alleged abductee) awakened and on the light of electric bulbs, they saw 08 persons duly armed were standing in their house to whom they saw and identified to be Ashique, 2.Wazir, 3.Rahib, 4.Bahadur, 5.Hashim, 6.Zahid, 7.Azizullah and 8.Azeem all by caste Solangi duly armed with certain weapons, who by pointing their weapons directed them to remain

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men and due to fear of weapons, they remained silent. It is further alleged that accused Ashique and Wazir have dragged the daughter-in-law of complainant while rest of the accused have also took her from the legs and arms and then by boarding her in Datsun standing outside the house, decamped from the scene. Due to odd hours of night they remained at home and on the following morning after consultation with each other, the complainant went to Police Station and got registered the present case. After due investigation, the FIR was challaned and the applicants were shown absconder therefore, order against them was passed in their absentia as required under section 512, Cr.PC and subsequently, they were arrested on 13.7.2016.

3. Learned counsel for the applicants submits that the offence is unseen and the alleged abductee being adult and *sui juris* had left the house of her in-laws according to her own and has not been abducted as alleged. He further submits that after leaving the house of her in-laws, the alleged abductee has contracted her second marriage and therefore, the allegations leveled against the applicants are nothing but bundle of lies. He has also focused upon affidavit sworn by alleged abductee whereby she has married with co-accused Ashique and to such effect she has also sworn affidavit before this Court on 02.6.2017 whereby she has categorically stated that she has married with Ashique and none has abducted her as alleged. She has extended her no objection for grant of bail to applicants. He however prayed for grant of bail to the applicants.

4. Miss Rubina Dhamrah for the State in view of the affidavit sworn by abductee has recorded her no objection.

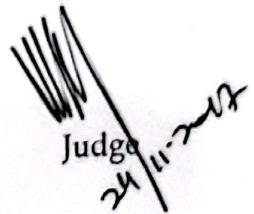
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5. The complainant and his counsel though have been noticed yet chosen to remain absent. However, Mr. Ghulam Muhammad Barijo, Advocate during hearing of the bail application put himself in appearance and held brief for Mr. Abdul Sattar Janveri, counsel for the complainant who is reportedly out of station. On 13.10.2017 the complainant was present and sought adjournment on the ground that his counsel was on general adjournment and on 13.11.2017 again his counsel was called absent. Today is the same position. It appears that after filing of affidavit by the abductee the complainant has chosen to linger on the proceedings aims to defeat the interest of applicants. The applicants are in custody from the date of their arrest and they may not be kept behind the bars at the sweet will of the complainant for indefinite period.

6. The entire episode of prosecution case rests upon the statement of the alleged abductee who at same moment is victim of the alleged crime. Said abductee Mst. Saba has filed her affidavit before this Court thereby has exonerated all the applicants from commission of alleged offence and has also extended her no objection for grant of bail to applicants. The investigation of case has been completed and they are no more required for purpose of investigation. Therefore, their further incarceration in jail would not serve any legal or technical purpose. Alleged abductee being star witness of the crime, has entered in to nikah and has marry with one of co-accused and obviously she would not support the case of prosecution at trial. The version of alleged abductee is contradictory to the version of F.I.R which shows that alleged abductee has taken divergent stand and same *prima facie* casts serious doubt upon the veracity of prosecution evidence, which, thus

entitles the applicants with concession of post arrest bail. Reliance can be placed from the case of SHAMASDIN V. THE STATE and other vide 2014 MLD 473. In view of discussion, discussed hereinabove, case against applicants requires further enquiry as contemplated by sub-section (2) to Section 497, Cr.P.C.

Consequently, instant application is allowed. The applicants are directed to be released on bail on furnishing their solvent surety in the sum of Rs.100,000/- each and P.R bond in the like amount to the satisfaction of trial Court.



Judge
24/11/2017

Abid H. Qazi/**